(1)

Supreme Court
FILED

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No. 01-

OFFICE OF THE CLERK

IN THE SUPREME COURT

OF THE UNTED STATES

Cheri Smith.

Petitioner

Vs.

William C Birdsall. ETAL

Respondent(s)

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

CHERI SMITH
Defendant. Pro Se
P O Box 10877
Tempe. AZ 85284
480-710-0947

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QUESTIONS PRESENTED

1. Does *4 U.S.C. § 112,* Compacts between States for cooperation in prevention of crime; consent of Congress, come within that exception of the federal anti-injunction statute, 28 U.S.C. § 2283, that provides that a federal court may not enjoin state court proceedings "except as expressly authorized by Act of Congress."
2. Did the Tenth Circuit err in holding that the State of New Mexico and officials thereof cannot be sued (Injunctive Relief), given that the states expressly wave their immunity of being sued by the Interstate Compact for Adult Offender Supervision Statues.
3. Does the Interstate Compact for Adult Offender Supervision, which passed 35 states on June19, 2002, and became active. now an important question of Federal Law *(28 U.S.C. § 1331)* and fall within Interstate Commerce. This Court has not previously decided this question, and the U S Court of Appeals are in conflict.
4. Can a State District Court and officials thereof violate due process and the rulings in Gagnon v. Scarpelli, 411

U.S. 778 and Morrissey v. Brewer, 408 U.S. 471 clearly established Federal law, as determined by the Supreme Court of the United States, and interfere in Interstate Compact for Adult Offender Supervision without due process of law.

5. Did the Tenth Circuit and State Courts err in holding that Petitioner should not have counsel appointed given the fundamental rights in Gagnon v. Scarpelli, 411 U.S. 778 and Morrissey v. Brewer, 408 U.S. 471 as determined by this Court, had not been met.

6. Can State District Court, and Tenth Circuit issue orders and judgments thereof that are contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by this Court.

LIST OF PARTIES

The party to the proceedings in the United States Court of Appeals for the Tenth Circuit was Cheri Smith. All other parties did not enter an appearance in U S District Court for the District of New Mexico or the U S District Court for the Tenth Circuit, however, were served as required by due process.

1. State of New Mexico
   % Bill Richardson
   Governor State of New Mexico
   State Capitol
   Santa Fe, NM 87503

2. The Honorable William C Birdsall
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3. State of New Mexico
   Sandra A. Price, Chief Deputy Assistant District Attorney
   % Greg Tucker, San Juan County District Attorney
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4. State of New Mexico
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   NM Atty. General Office
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5. New Mexico Interstate Compact &
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[Respondents]

7. Supreme Court for the State of New Mexico
Supreme Court Chief Justice
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8. Parole & Probation Compact Administrator's Association
% Don LaFratta, President
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9. Don Blackburn
Executive Director
Interstate Commission for Adult Offender Supervision
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[Interested Parties]

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner Cheri Smith respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Tenth Circuit in this case.

OPINIONS BELOW

The Appendix B- Opinion Order of the United States Court of Appeals for the Tenth Circuit is unpublished. The Appendix A - Order denying the Petition for Rehearing and for Rehearing En Banc unpublished. The Appendix C - Opinion of the United States District Court for the District of New Mexico is unpublished.

The Appendix D Opinion of the State of New Mexico Supreme Court is unpublished; Appendix E Order Opinion of the State of New Mexico Supreme Court is unpublished

JURISDICTION

The judgment of the United States Court of Appeals for the Tenth Circuit was issued on June 23, 2003, and the petition for rehearing and for rehearing *en banc* was denied on August 4, 2003. This Court has jur liction over this petition under 28 U.S.C. § 1254 (1).

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

The Contract Clause of the Untied States Constitution confers upon Congress the Power

U.S. Const., Art. I, § 10, Cl. 1 Congressional Law impairing the obligation of contracts

U.S. Const., Art. I, § 10, Cl. 3. Congressional consent transforms such a compact into federal law

U.S. Const., Art. III, § 2, Cl. 1, & 2 Judicial Power of United States

U.S. Code 4 U.S.C. § 112 Compacts between States for cooperation in prevention of crime; consent of Congress

18 U.S.C. §3006A (C) & (I)

28 U.S.C. § 1331 Question of Federal Law

28 U.S.C. § 1343Civil rights and elective franchise

28 U.S.C. § 1254 (1) Courts of appeals; certiorari; certified Questions

28 U.S.C. § 2283 Stay of State court proceedings

Constitution of the United States, Amendment IV, V, & XIV

The Fourteenth Amendment provides, in pertinent part, "that nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws" *Id.*, amend. XIV

Constitution of the State of New Mexico Article II, §10 Searches and seizures), §14 (rights of accused), §15 (double jeopardy) & §18 (Due process; equal protection)

New Mexico N.M.S.A. 31-5-20 Interstate Compact for Adult Offender Supervision – Appendix F in pertinent part, "The Interstate Compact for Adult Offender Supervision is enacted into law and entered into on behalf of New Mexico with any and all other states legally joining therein in a form

substantially as follows..... The compacting states to this interstate compact recognize that each state is responsible for the supervision of adult offenders in the community.....The interstate commission shall have all the responsibilities, powers and duties set forth herein, including the power to sue and be sued"

New Mexico N.M.S.A. 31-21-8 Director to administer interstate compacts relating to convicts on probation and parole

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New Mexico Correction D . Policy CD 053001, Adult Interstate Compact

Constitution of the State of Arizona Article II § 4 (Due Process), § 24 (Rights of Accused in Criminal Prosecutions)

A.R.S.31-467 Arizona Interstate Compact for Adult Offender Supervision in pertinent part, "The Interstate Compact for Adult Offender Supervision is enacted into law and entered into on behalf of Arizona with any and all other states legally

joining therein in a form substantially as follows..... The compacting states to this interstate compact recognize that each state is responsible for the supervision of adult offenders in the community.....The interstate commission shall have all the responsibilities, powers and duties set forth herein, including the power to sue and be sued."

STATEMENT OF THE CASE

This case is about the Interstate Compact for Adult Offender Supervision of Parole & Probationers which was first passed in 1937; which the states also recognize that congress, by enacting the Crime Control Act, U.S. Code 4 U.S.C. § 112 Compacts between States for cooperation in prevention of crime; consent of Congress has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime, and has provided the sole statutory authority for regulating the transfer of Adult Parolee and Probation supervision across state boundaries. As of June 19, 2002 the new Interstate Compact for Adult Offender Supervision became active by thirty-five (35) States passing State Statues, thus making this a **New Important Question of Federal Law** *see 28 U.S.C. § 1331* there is a Division of the opinions of the U S Courts of Appeals, and the Courts are in conflict. Congressional consent transforms such a compact into federal law, U.S. Const., Art. I, § 10, Cl. 3 *28 U.S.C. §*

2283 . Stay of State court proceedings A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction. Congressional consent gives the Law impairing the obligation of a contract, U.S. Const., Art. I, § 10, Cl. 1 . This Court has previously held "The Compact Clause of the United States Constitution, Art. I, § 10, cl. 3 , provides that "No State shall, without the Consent of the Congress . . . enter into any Agreement or Compact with another State . . ." Because congressional consent transforms an interstate compact within this Clause into a law of the United States, this Court held that the construction of an interstate agreement sanctioned by Congress under the Compact Clause presents a federal question 28 U.S.C. § 1331 *Cuyler v. Adams*, 449 U.S. 433 (1981) This Court has also previously stated "The Constitution also prohibits States from entering into any "Treaty, Alliance, or Confederation" either with other States or with foreign governments. Art. I, § 10, cl. 1.

The Interstate Compact Clause and the State Treaty ensure that whatever sovereignty a State possesses within its own sphere of authority ends at its political border." *Port Authority Trans-Hudson Corp. v. Feeney*, 495 U.S. 299 (1990) Appendix K See Parole & Probation Compact Administrators Association Manual Rules Chapter3 Commentary to Section 1-101 ("The law of interstate compacts as interpreted by the U.S. Supreme Court is clear that interstate compacts are the highest form of state statutory law, having precedence over conflicting state statues and obligating the member states to the provisions of the agreement as though it were a binding contract as well as a statue entered into by the member states.") Having entered into a contract, a participant state may not unilaterally change its terms."[1] A State of New Mexico District Attorney (Price)

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[1] See also Aveline, 728 A.2d at 1257 n.10 (found in McComb v. Wambaugh, 934 F.2d 474 (3rd Cir. 1991) observed that:
[c]ompacts have the characteristics of contracts because the enactment of the compact terms as part of an enabling statue by one state is viewed as an offer. The offer may be accepted through enactment of statues, including the same compact

filed A Motion to Revoke Probation, while Petitioner was on Parole on September 28, 2001 which continues for sixteen (16) months and nine (9) hearings, which the Defendant attended until January 14, 2003 at which time a warrant was issued, after Defendant filed notice of appeal, violating due process Constitution of the United States, Amendment IV, V, & XI; Constitution of the State of New Mexico Article II, §10, §14, & §18; New Mexico N.M.S.A. 31-5-20 Interstate Compact for Adult Offender Supervision - Appendix F; N.M.S.A 31-21-15 Return of probation violator- Appendix H; N.M.S.A. 31-21-14 Return of parole violator- Appendix G; Constitution of the State of Arizona Article II § 4, § 24; and Arizona A.R.S.31-467 - Appendix J. Appendix I- New Mexico Correction Depart Policy CD 053001 (II)(B)(2) , Adult Interstate Compact, states, "In the case of a New

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terms by another state. As with other contracts, the Contract Clause of the United States Constitution protects compacts from impairment by the states. This means that upon enacting a compact, it takes precedence over the subsequent statues of signatory states and, as such, a state may not unilaterally nullify, revoke or amend one of its compacts if the compact does not so provide." (Internal citation omitted.)

Mexico probationer to be transferred to, or who is already residing in another state, correspondence should not be conducted directly with local Probation Officer who is supervising the case. Rather, correspondence will be maintained only with the Compact Administrator of the State through the Interstate Compact Administrator (ICA). When a Probation Parole Officer from another state writes directly to one of our district offices, a copy should be routed to Central Office, Probation and Parole Division, through the Region Office. The ICA will inform the other state's probation office to channel their correspondence through their compact administrator." Petitioner has been a resident of Arizona since February 7, 2001 with Parole granted and probation transferred. There have not been any parole or probation revocation actions filed by Arizona and no other charges pending in any state. This Court has ordered that Due Process requirements are found in *Morrissey v Brewer*, 408 U.S. 471 (1972) , *Gagnon v Scarpelli*, 411 U.S. 778 (1973), for a Parole or Probation Revocation. see Parole & Probation

Compact Administrators Association Manual Rules Chapter 3 Probable Cause Hearings to Section 5-102 (Appendix K) ("Morrissey v. Brewer and Gagnon v. Scarpelli) mandate the holding of preliminary probable cause hearings in the receiving state prior to returning an alleged violator to the sending state.") A hearing for an alleged parole or probation revocation would be initiated in Arizona. Appendix L- New Mexico Interstate Compact Deputy Administrator presented documented by Letter of October 30, 2001 that the State District Attorney (Price) initiated this proceeding not Parole or Probation, thus violating due process and fundamental rights guaranteed by Parole & Probation through Interstate Compact. The State District Attorney (Price) by her actions denies the Petitioner equal protection of the law and fundamental rights, and filed a motion to revoke without due process of law. *Edelman v. Jordan*, 415 U.S. 651 (1974) cites: *In Ex Parte Young*, 209 U.S. 123 The State District Attorney (Price) then uses her position to issue Subpoena Duces Tecum's on the Petitioners Landlord, Banks,

Telephone, and Employers. *United States v. Keen,* 509 F.2d 1273 (6th Cir. 1975). During these proceedings, Petitioner also finds that the State District Attorney committed Perjury, deceit, malicious abuse of process. The State, after a hearing on November 13, 2001 leaves Petitioner in Double Jeopardy, *Ashe v. Swenson,* 397 U.S. 436, 90 S.Ct. 1189, 25 L.Ed.2d 469 (1970), by an order of probation, as well as numerous other violations or decisions thereof are contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States. These in themselves are not a reason for the injunction requested by the Petitioner however; they go towards showing harassment of Petitioner and her family. *Dombrowski v. Pfister,* 380 U.S. 479 (1965); *Younger v. Harris,* 401 U.S. 37 (1971)

Petitioner being pro se filed a Writ of Mandamus and Immediate Stay in the Supreme Court for the State of New Mexico, the Writ informed the Supreme Court of the State of New Mexico of the actions of the State District Attorney, the

Writ was denied – Appendix E, and filed for reconsideration, which was denied – Appendix D Petitioner being pro see and layman at law files Petition for Writ of Mandamus and Immediate Stay, and Petition for In Forma Pauperis, and appointment of Counsel, since the subject matter involves fundamental rights in the US District Court for the District of New Mexico, Petitioner is granted Informa Pauperis. Appointment of Counsel is denied Judge Lorenzo Garcia states, "A review of the pleadings indicates that Smith has been able to draft pleadings outlining her theory of the claim. Exhibits to the motion also indicated that on prior occasions, Petitioner represented herself in State Court matters."- Appendix C The US District for the District of New Mexico acknowledges the cause of action. Petitioner files Motion to Supplement the Record and Motion for Extension of Time to Appeal. (February 26, 2003) The reason the Motion to Supplement the Record is denied is that it exceeds D.N.M.LR-Civ 10.5. Exhibits to a motion, response or reply, including excerpts from a deposition, must not exceed fifty

(50) pages, unless all parties agree otherwise. If agreement cannot be reached, then the party seeking to exceed the page limit must file a motion in accordance with D.N.M.LR-CIV 7. The record will indicate that the Motion was stamped and all parties served certified and filed in accordance of D.N.M.LR-CIV 7, service was sent to the United States District Court for the District of New Mexico. The Respondents did not enter an appearance, thus waving their rights. Petitioner appealed to the US District Court for the Tenth Circuit, which was denied. Petitioner filed Appendix A - Petition for Rehearing En Banc Out of Time by One Day, The Tenth Circuit granted Appendix A The Motion for Leave to File Petition for rehearing en banc out of time by one day Appendix A- The petition for rehearing is denied. The Court's basic rulings stated that since Petitioner did not state a cause of action. Petitioner is layman of law, and the US District Court and the US Court of Appeal for the Tenth Circuit decided the issues on the procedural issues that the State could not be sued and not upon the merits, *Steffel v*

Thompson, 415 U.S. 452 (1974). The US District Court, however, acknowledges the cause of action by Judge Lorenzo Garcia's own statement.

REASONS FOR GRANTING THE WRIT

As this Court has made increasingly clear, Congress' power is constrained by both express and implied limitations in the Constitution's grants of power. These constraints can inhere "in the very language" of the grant itself. *Cameron v Mills*, 645 F. Supp. 1119,(S.D.Iowa 1986) (Interstate Corrections Compact) *Carchman v. Nash*, 473 U.S. 716 (1985) (Interstate Detainers); *Port Authority Trans-Hudson Corp. v. Feeney*, 495 U.S. 299 (1990) (Interstate Railway); *Railway Labor Executives' Ass'n v. Gibbons*, 455 U.S. 457 (1982) (uniformity requirement in bankruptcy clause). They can be found in the express terms conditioning particular grants of constitutional power. Alternatively, they can flow from "presuppositions" that the Constitution "confirms." *Blatchford v. Native Village of Noatak*, 501 U.S. 775, 779 (1991) (11th Amendment). The question in this case is

whether the Interstate Compact for Adult Offender Supervision for Parole & Probation is a new important question of Federal Law 28 *U.S.C. § 1331*. Each State that has enacted this Statue must comply with the wording drafted by the Counsel of State Government (CSG) and the National Institute of Corrections (NIC). Beginning in January 2000 the new Interstate Compact for Adult Offender Supervision saw acceptance in the states and by June 19, 2002 had reached its threshold of thirty-five (35) States, thereby becoming active in 30 months. The Interstate Compact for Adult Offender Supervision, in pertinent part, "Article I (A) states the compacting states also recognize that Congress, by enacting the crime control act, 4 United States Code section 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime." "Article III (A) initiate legal action... in the federal district where the interstate commission has it offices to enforce compliance with the provisions of the compact or its duly promulgated rules and bylaws, against

any compacting state in default." For all the foregoing this is a Question of Federal Law *28 U.S.C. § 1331* Question of Federal Law *28 U.S.C. § 1331* which this Court has not previously entertained.

This Court should also grant review to resolve the confusion among the circuits both about the scope of Compact Clause and about the interaction between Congress' compact and contract power since Act of Congress expressly authorizes this and it is necessary to aid its jurisdiction.

The decision below conflicts with the United States District Court, S.D. Iowa, C.D.; United States District for the Western District of Pennsylvania, and the U S Court of Appeals for the Third Circuit; interpretation of Congress' compact and contract power, and reveals tensions with other circuits about the same power. The decision also conflicts with this Courts previous ruling with respects to Interstate Commerce Compacts.

I. This Court Should Grant Certiorari To Resolve A Conflict in the circuits About Whether this is a question

of important Federal Law, and if the States wave their rights to be sued.

The Compact Clause gives Congress the power:

> "To consent for any two or more States to enter into agreements or compacts for cooperative effort and mutual assistance in the prevention of crime and in the enforcement of their respective criminal laws and policies, and to establish such agencies, joint or otherwise, as they may deem desirable for making effective such agreements and compacts"

U.S. Const., Art. I, § 10, Cl. 3 Congressional consent transforms such a compact into federal law

As this, Court has held:

"Congressional consent is not required for interstate agreements that fall outside the scope of the Compact Clause. Where an agreement is not "directed to the formation of any combination tending to the increase of political power in the States, which may encroach upon or interfere with the just supremacy of the United States," it does not fall within the scope of the Clause and will not be invalidated for lack of

congressional consent. But where Congress has authorized the States to enter into a cooperative agreement, and where the subject matter of that agreement is an appropriate subject for congressional legislation, the consent of Congress transforms the States' agreement into federal law under the Compact Clause. *Cuyler,* 449 U.S. at 440, 101 S.Ct. at 707." Interstate Compact allows the permanent injunctive relief that Petitioner has requested. To appeal to a Court for protection of fundamental rights Parole & Probation Compact Administrators Association Manual Rules Chapter 3 which in pertinent part " No Parolee or Probationer under the Compact shall be denied the right to appeal to a court for the protection on individual rights." Petitioner presented this to the State of New Mexico and was denied, Petitioner presented this to the U S District Court for the District of New Mexico and was denied, and to the U S Court of Appeals for the Tenth Circuit and was denied. This is a new important Question of Federal Law, which this Court should decide. *Doe v. Ward*, Civil Action 98-1746 , United States

District for the Western District of Pennsylvania- Appendix N supports Petitioners arguments that the State can be sued and that this is a question of Federal Law.

A. The Decision Below Conflicts With Authority Of This Court

As petitioner has argued, this Court has expressly held that where Congress has authorized the States to enter into a cooperative agreement, and where the subject matter of that agreement is an appropriate subject for congressional legislation, the consent of Congress transforms the States' agreement into federal law under the Compact Clause. *Cuyler,*, 449 U.S. at 440, 101 S.Ct. at 707" Petitioner has argued, this Court has expressly stated

> *Edelman v Jordan*, *415 U.S. 651* (1974) cites: In *Ex Parte Young,* 209 U.S. 123, a suit by stockholders of a railroad was brought in a federal court against state officials to enjoin the imposition of confiscatory rates on the railroad in violation of the Fourteenth Amendment. The Eleventh Amendment was

> interposed as a defense. The Court rejected the defense, saying that state officials with authority to enforce state laws "who threaten and are about to commence proceedings, either of a civil or criminal nature, to enforce against parties affected an unconstitutional act, violating the Federal Constitution, may be enjoined by a Federal court of equity from such action."

The State District Attorney (Price) using the Colors of her Office *28 U.S.C. § 1343* (Civil rights) initiates a Motion to Revoke pursuant to New Mexico State Statues N.M.S.A. 31-21-14 Return of parole violator; N.M.S.A 31-21-15 Return of probation violator which are in direct conflict with Interstate Compact Adult Offender Supervision. These actions violate the United States Constitution and the fundamental rights of Petitioner. As this Court has previously stated in *West Virginia ex rel. Dyer v Sim*, 341 U.S. 11, 27-28, 17 s.Ct. 557,560, 95 L.Ed. 7`3 (1951) "Having entered into a contract, a participant state may not unilaterally change its terms. A

compact also takes precedence over statutory law in member states." Thus being the case, the State District Attorney (Price) cannot change the terms or conditions of the compact. State District Attorney (Price) using the Colors of her Office violated Fundamental Rights of Petitioner by initiating a Motion to Revoke, Parole *& Probation Compact Administrators Association Manual Rules Chapter 3* Appendix *K* Rule 5-102. Petitioner asserted her rights found in *28 U.S.C. § 1343 (a) (3)* To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

The States of the United States by passing the Interstate Compact for Adult Offender Supervision wave their rights to sue and be sued. Petitioner did not sue for monetary damages just a prayer for Injunctive Relief. The relief requested is within the jurisdiction of the Courts to Grant, since this has

become a new important question of Federal Law *(28 U.S.C. § 1331)* This Court has previously stated suits to enjoin the institution or prosecution of a state court action, the result of which would be to cast an undue burden upon interstate commerce. *Atchison, T. & S.F. Ry. Co. v. Wells*, 265 U.S. 101; *Riehle v. Margolies*, 279 U.S. 218; *Hill v. Martin*, 296 U.S. 393.

This Court has previously stated Suits to enjoin the institution or prosecution in the state court of proceedings to enforce a local statute, which is repugnant to the Constitution. *Ex parte Young*, 209 U.S. 123; *Truax v. Raich*, 239 U.S. 33; *Missouri v. Chicago, B. & Q.R. Co.*, 241 U.S. 533.

B. The Decision Below Conflicts with U.S. Const., Art. III, § 2, Cl. 1, & 2 Judicial Power of United States.

Petitioner has lived in Arizona since February 7, 2001. There are no charges pending from New Mexico; therefore, the Summons to appear cannot be heard in State Court of New Mexico. Article III, § 2, Cl. 1, & 2 states in pertinent part " The Judicial Power shall extend to all cases, in Law &

Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; -To Controversies between two or more States; --between a State and Citizens of another State." Petitioner lives in Arizona, proper jurisdiction by the United States Constitution is Federal Court. There were no new charges filed against Petitioner. The Tenth Circuit erred in their Judgment.

C. The Decision Below Conflicts With The Rule Of The Third Circuit, With Authority From Other Circuits, and with other Compact States.

The decision below also contradicts the rule of the Third Circuit, and is in tension with the approach of at least four other circuits. There are 46 other States which have passed the same identical Statue and must comply with the *Parole & Probation Compact Administrators Association Manual Rules Chapter 3 Appendix K* The State of New Jersey denied parole to a person and had to re-evaluate their position, Appendix M- Letter from New Jersey Attorney, David Samson, Tamara Rudow regarding Interstate Compact and the PPCAA Manual, which explains application of the

Compact .The decision below conflicts with *McComb v. Wambaugh*, 934 F.2d 474 (3rd Cir. 1991) . Which in pertinent part, "having entered into compact with another state, participant state may not unilaterally change its terms…under constitutional article requiring consent of Congress as to any agreement or compact between states, congressional approval is necessary only when compact is directed to formation of any combination tending to increase political power in states which may encroach upon or interfere with supremacy of the United States. U.S.C.A. Const. Art. 1, §10, cl. 3."

The Interstate Commission for Adult Offender Supervision by-laws - Appendix O, in pertinent part, Article I, Section 2 "the promulgation of binding rules and operating procedures; oversight and coordination of offender transfer and supervision activities in Compacting States."

The Interstate Commission has supervision over Petitioner, not the State District Attorney (Price)

II. This Court Should Grant Certiorari To Resolve Due Process Requirements in Conflict in the Circuits About The Interstate Compact and the Unreasonable application of clearly established Federal Law as Determined by this Court.

Petitioner has raised a Fourteenth Amendment challenge to interstate Compact of Adult Offender Supervision. The Circuits have a double task of Due Process while enforcing Federal Law. The Interstate Compact *Parole & Probation Compact Administrators Association Manual Rules Chapter 3 (Appendix K) Rule 5-102 states* that any Probation Revocation will be held in the Receiving State with the requirements in Gagnon v. Scarpelli, 411 U.S. 778 and Morrissey v. Brewer, 408 U.S. 471 clearly established Federal law, as determined by the Supreme Court of the United States. The Tenth Circuit's application of Interstate Compact of Adult Offender Supervision is clearly mistaken. It is also in direct conflict with the approach of the Third Circuit.

A. The Tenth Circuit Has Mistakenly Overlooked The Reach Of This Court's Decision In Gagnon v. Scarpelli, 411 U.S. 778)and Morrissey v. Brewer, 408 U.S. 471 clearly established Federal law and *18 U.S.C.§3006A*

This Court has set the requirements for a probation or parole revocation should one occur.

"(a) Written notice of the claimed violations of [probation or] parole; (b) disclosure to the [probationer or] parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a `neutral and detached' hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the fact finders as to the evidence relied on and reasons for revoking [probation or] parole." *Morrissey* v. *Brewer, supra,* at 489.

These requirements in themselves serve as substantial protection against ill-considered revocation and are "minimum requirements of due process". There are critical differences between criminal trials and probation or parole

revocation hearings, and both society and the probationer or parolee has stakes in preserving these differences. This Court also stated, "In a criminal trial, the State is represented by a prosecutor; formal rules of evidence are in force; a defendant enjoys a number of procedural rights which may be lost if not timely raised; and, in a jury trial, a defendant must make a presentation understandable to untrained jurors. In short, a criminal trial under our system is an adversary proceeding with its own unique characteristics. In a revocation hearing, on the other hand, the State is represented, not by a prosecutor, but by a parole officer with the orientation described above; formal procedures and rules of evidence are not employed; and the members of the hearing body are familiar with the problems and practice of probation or parole." Since the minimum due process, requirements as set forth by this Court have not been met, and the proceedings in State Court involve due process violations. Counsel should be appointed. When Representation shall be provided for any financially eligible person a charge with a violation of

probation pending or who interests or faces loss of liberty interest in question, *18 U.S.C. §3006A (C) & (I)* which in pertinent part "Each United States district court… shall place in operation… district a plan for furnishing representation for any person financially unable to obtain adequate representation in accordance with this section…. (C) Is charged with a violation of probation or faces loss of liberty in a case, and Federal law requires the appointment of counsel. A Motion to revoke had been filed, even though Due Process had not been met, therefore counsel should be appointed. Just because a person can make a motion does not mean they have the skills needed to make a legal brief or argument. Liberty interests as well as Constitutional rights of Petitioner were in question. Just the skill to make a motion does not make the skills to argue said motion and support thereof. If counsel were appointed the fundamental rights of petitioner would be protected. Petitioner was granted In Forma Pauperis and does not have the necessary skill and training to represent herself. Petitioner didn't comprehend

how the State of New Mexico District Attorney (Price) committed these actions, since she was not Parole and Probation and the State of Arizona was allowed to set the terms and conditions of *Parole & Probation Compact Administrators Association Manual Rules Chapter 3 Rule 2-110,* Appendix K and Arizona had not filed any probation or parole action.

The Due Process requirements were not met as required in Gagnon v. Scarpelli, 411 U.S. 778 and Morrissey v. Brewer, 408 U.S. 471, and injunctive relief should be granted. State of New Mexico District Attorney (Price) has ignored Federal Law and Fundamental rights of Petitioner. Interstate Compact allows the relief that Petitioner has requested. To appeal to a Court for protection of civil rights *Parole & Probation Compact Administrators Association Manual Rules Chapter 3 Rule 5-107Appendix K* which in pertinent part "No Parolee or Probationer under the Compact shall be denied the right to appeal to a court for the protection on individual rights." Petitioner presented this to the State of

New Mexico and was denied, Petitioner presented this to the U S District Court for the District of New Mexico and was denied, and to the U S Court of Appeals for the Tenth Circuit and was denied. This is a new important Question of Federal Law, which this Court should decide.

B. The Opinion Below Conflicts With The Third Circuit, other Circuits, and U S District Courts, and States of the Interstate Compact.

CONCLUSION

For the forgoing reasons, petitioner submits that this Court should grant review in this case to reverse the holding of the Tenth Circuit with respect to the Injunctive Relief and the wavier of Suit by States of the Interstate Compact, due to the important question of Federal Law *(28 U.S.C. § 1331)* Petitioner would also pray that this Court not remand the case to the US Court of Appeals for the Tenth Circuit since the relief requested can be granted by this Court for any and all of the foregoing reasons, to enter an order to the State of New Mexico Eleventh Judicial District Court Proceedings (CR 98-

935-4), with specification that a permanent injunctive order against all parties including but not limited to State of New Mexico, Chief Deputy Assistant District Attorney, (Price); State of New Mexico Eleventh Judicial District Court, Honorable William C Birdsall or another; and State of New Mexico Interstate Compact, and State of New Mexico Adult Parole & Probation enjoining all parties except by legal due process. 2) All reports, an orders issued as a result of the action filed on September 28, 2001 by the State of New Mexico (Price), be dismissed with prejudice; including but not limited to Motion to Revoke, Order of Probation, Promissory Note, and warrant issued for failure to appear. 3) That the State of New Mexico, New Mexico Adult Parole & Probation, State District Attorney, and Eleventh Judicial District Court and the officials thereof do not interfere in the State of Arizona supervision, and any contact made shall be by due process pursuant to State of New Mexico State Statues and Department Policies & Procedures. 4) That the terms and conditions that were set by Arlin Chester of Sta

of Arizona Department of Parole & Probation and Arizona Interstate Compact, remain in force and the State of Arizona Interstate Compact Adult Parole & Probation and State of New Mexico Interstate Compact Adult Parole & Probation abide by such, and that the State of New Mexico District Attorney (Price) is prohibited from interference and harassment of Petitioner, and that this order further bars State of New Mexico District Attorney (Price) or another from contacting Petitioners Employers, stocking Petitioner or her family. Petitioner also requests such other and further relief as this Court deems just and proper.

Respectfully Submitted,

Cheri Smith
P O Box 10877
Tempe, AZ 85284-0015
480-710-947

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

CHERI SMITH,

Plaintiff - Appellant,

v. No. 03-2067

WILLIAM C. BIRDSALL, et al., Defendants - Appellees.

ORDER

Filed August 4, 2003

Before KELLY, BRISCOE, and LUCERO, Circuit Judges.

Appellant's petition for rehearing is denied.

The petition for rehearing en banc was transmitted to all of the judges of the court who are in regular active service. As no member of the panel and no judge in regular active service on the court requested that the court be polled, that petition is also denied.

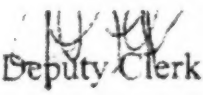
Entered for the Court

PATRICK FISHER,
Clerk of Court
by: Deputy Clerk
Deputy Clerk

Appendix A

submitted to the en banc panel.

Entered for the Court
Patrick, Clerk of Court

by: 
Deputy Clerk

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

Cheri Smith,

Appellant,

vs.

William C Birdsall, Honorable
11th Judicial District ,
Sandra A Price
ADA San Juan County,
New Mexico Interstate Compact,
New Mexico Parole & Probation,
Arizona Interstate Compact,
Arizona Adult Parole & Probation,

Appellee

No. 03-2067
(D.C. No. CIV-03-84-LFG/WWD)
(D. New Mexico)

PETITION FOR REHEARING EN BANC OUT OF TIME BY ONE DAY

CHERI SMITH
Appellant, Pro Se
P O Box 10877
Tempe, AZ 85284
480-710-3294

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PETITION FOR REHEARING EN BANC OUT OF TIME BY ONE DAY

STATEMENT OF JURISDICTION

COME NOW THE Appellant, Cheri Smith, pro se and files this Petition for Rehearing En Banc Out of Time By One Day pursuant to Fed.R.App.P.35(b)(1)(A); Fed.R.App.P.40; 10th Cir.R. 35.1, and Petitions for a Rehearing En Banc is therefore necessary to secure and maintain uniformity of the Court's Decisions to comply with a United States Supreme Court ruling in Cuyler *v.* Adams, *449 U.S. 433* (1981); Ex Parte Young, 209 U.S. 123 (1908); Gagnon *v.* Scarpelli, *411 U.S. 778* (1973); and Morrissey *v.* Brewer, *408 U.S. 471* (1972); Edelman *v.* Jordan, *415 U.S. 651* (1974) Pursuant to Fed.R.App.P 35 (b)(1)(B) the proceeding involves one or more questions of exceptional importance, it involves an issue on which the panel decision conflicts with the authoritative decisions of other United States Court of Appeals that have addressed the same issue; Doe V. Ward, Civil Action 98-1746, United States District for the Western District of Pennsylvania; McComb v. Wambaugh, 934 F.2d 474 (3rd Cir. 1991); Cameron v. Mills, (S.D.Iowa 1986) 645

F. Supp. 1119. The Appellant would also move that this Petition for Rehearing En Banc Out of Time by one day be heard since the Judgment took seven days to reach Appellant and did not allow adequate time for preparation of response, and Appellant is the only party who has entered an appearance for the case in the United States District Court for the District of New Mexico and United States Court of Appeals for the Tenth Circuit.

STATEMENT OF ISSUES

1. Can the United States District Court for the District of New Mexico enjoin a State Official and State District Court from Violating Due Process and Violation of Contract Clause of the United States Constitution, and Compacts between States for cooperation in prevention of crime; consent of Congress see 4 U.S.C. § 112. The Question is one of Federal Law presented.

STATEMENT OF THE CASE

Cheri Smith Paroled to Arizona on February 7, 2001 with Probation and Parole transferred to Arizona and agreed to by

New Mexico Interstate Compact, see 4 U.S.C. § 112, N.M.S.A. 31-5-20, A.R.S.31-467. Cheri Smith has been a resident in the State of Arizona since February 7, 2001, see 28 U.S.C. § 1391. A State of New Mexico District Attorney filed for a revocation of probation against Cheri Smith on September 28, 2001, and continued until January 14, 2003 at which time a warrant was issued violating due process. Constitution of the United States, Amendment IV, V, & XIV; Constitution of the State of New Mexico Article II, §10, §14, & §18; Constitution of the State of Arizona Article II § 4, § 24. There have not been any probation revocation actions filed by Arizona.

STATEMENT OF THE FACTS

Cheri Smith Paroled to Arizona on February 7, 2001 with Probation and Parole transferred to Arizona and agreed to by New Mexico Interstate Compact, see 4 U.S.C. § 112, N.M.S.A. 31-5-20, A.R.S.31-467. Cheri Smith has been a resident in the State of Arizona since February 7, 2001, see 28 U.S.C. § 1391. Cuyler *v.* Adams, *449 U.S. 433* (1981)

states: "The Compact Clause of the United States Constitution, Art. I, § 10, cl. 3, provides that "No State shall, without the Consent of the Congress . . . enter into any Agreement or Compact with another State . . ." Because congressional consent transforms an interstate compact within this Clause into a law of the United States, we have held that the construction of an interstate agreement sanctioned by Congress under the Compact Clause presents a federal question. It is essential a federal question be decided by a federal court, see *28 U.S.C. § 1331.* Doe V. Ward, Civil Action 98-1746, United States District for the Western District of Pennsylvania states: "An interstate compact functions as a contract and "takes precedence over statutory law in member states." McComb v. Wambaugh, 934 F.2d 474 (3rd Cir. 1991) see Parole & Probation Compact Administrators Association Manual Rules Chapter 3 Commentary to Section 1-101 ("The law of interstate compacts as interpreted by the U.S. Supreme Court is clear that interstate compacts are the highest form of state statutory

law, having precedence over conflicting state statues and obligating the member states to the provisions of the agreement as though it were a binding contract as well as a statue entered into by the member states.") Having entered into a contract, a participant state may not unilaterally change its terms."[1] A State of New Mexico District Attorney filed for a revocation of probation against Cheri Smith on September 28, 2001 which continues for 16 months and nine hearings, which the Appellant attended until January 14, 2003 at which time a warrant was issued violating due process. Constitution of the United States, Amendment IV, V, & XIV; Constitution of the State of New Mexico Article II, §10, §14, & §18;

---

[1] See also Aveline, 728 A.2d at 1257 n.10 (found in McComb v. Wambaugh, 934 F.2d 474 (3rd Cir. 1991)) observed that:

[c]ompacts have the characteristics of contracts because the enactment of the compact terms as part of an enabling statue by one state is viewed as an offer. The offer may be accepted through enactment of statues, including the same compact terms by another state. As with other contracts, the Contract Clause of the United States Constitution protects compacts from impairment by the states. This means that upon enacting a compact, it takes precedence over the subsequent statues of signatory states and, as such, a state may not unilaterally nullify, revoke or amend one of its compacts if the compact does not so provide." (Internal citation omitted.)

Constitution of the State of Arizona Article II § 4, § 24. New Mexico Correction Depart Policy CD 053001, Adult Interstate Compact, states "In the case of a New Mexico probationer to be transferred to, or who is already residing in another state, correspondence should not be conducted directly with local Probation Officer who is supervising the case. Rather, correspondence will be maintained only with the Compact Administrator of the State through the Interstate Compact Administrator (ICA). When a Probation Parole Officer from another state writes directly to one of our district offices, a copy should be routed to Central Office, Probation and Parole Division, through the Region Office. The ICA will inform the other state's probation office to channel their correspondence through their compact administrator." There have not been any probation revocation actions filed by Arizona. Due Process requirements are found in Morrissey *v.* Brewer, *408 U.S. 471* (1972), Gagnon *v.* Scarpelli, *411 U.S. 778* (1973) which state: "At the revocation hearing, which must be conducted

reasonably soon after the parolee's arrest, minimum due process requirements are: (a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a "neutral and detached" hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the fact finders as to the evidence relied on and reasons for revoking parole. see Parole & Probation Compact Administrators Association Manual Rules Chapter 3 Probable Cause Hearings to Section 5-102 ("Morrissey v. Brewer and Gagnon v. Scarpelli mandate the holding of preliminary p ·able cause hearings in the receiving state prior to returning an ·'l·ged violator to the sending state.") A hearing for an alleged violation would be held in Arizona, if one had occurred. New Mexico Interstate Compact Deputy

Administrator Celeste Casias has given documented testimony by Letter of October 30, 2001 that the State District Attorney did this not Parole or Probation, thus violating due process guaranteed by Parole & Probation through Interstate Compact, which is a question of federal law. The United States District Court for the District of New Mexico has jurisdiction to enforce Federal Interstate Compact and Due Process Rights of Appellant. see 28 U.S.C. § 1343(a)(3) "To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States." The State District Attorney by her actions are denying the Appellant equal protection of the law, and filed a motion to revoke probation without due process of law, thus raising a Federal question. Edelman *v.* Jordan, *415 U.S. 651* (1974) cites: In Ex Parte Young, 209 U.S. 123 (1908) a suit by stockholders of a

railroad was brought in a federal court against state officials to enjoin the imposition of confiscatory rates on the railroad in violation of the Fourteenth Amendment. The Eleventh Amendment was interposed as a defense. The Court rejected the defense, saying that state officials with authority to enforce state laws "who threaten and are about to commence proceedings, either of a civil or criminal nature, to enforce against parties affected an unconstitutional act, violating the Federal Constitution, may be enjoined by a Federal court of equity from such action." Thus the State District Attorney and State District Court should be enjoined from their actions.

SUMMARY OF THE ARGUMENT

Does Anti-Injunction Act, 28 U.S.C. § 2283 bar the United States District Court for the District of New Mexico from enjoining a State Official and State District Court from Violating Due Process and Violation of Contract Clause of the United States Constitution, and Compacts between States for cooperation in prevention of crime; consent of Congress

see 4 U.S.C. § 112. The Question is one of Federal Law presented.

ARGUMENT

I. Can the United States District Court for the District of New Mexico enjoin a State Official and State District Court from Violating Due Process and Violation of Contract Clause of the United States Constitution, and Compacts between States for cooperation in prevention of crime; consent of Congress see 4 U.S.C. § 112. The Question is one of Federal Law presented.

A Standard of Review

28 U.S.C. § 2283 states: A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments. Interstate Compact see 4 U.S.C. § 112 and Contract Clause of the United States Constitution raise a question of Federal law, and a Federal Court would have to aid in the jurisdiction thereof see *28 U.S.C. § 1331.* A State District Attorney is

also violating Due Process protections of Appellant see 28 U.S.C. § 1343. Therefore the question of federal law does allow injunctive relief Edelman *v.* Jordan, *415 U.S. 651* (1974) : In Ex Parte Young, 209 U.S. 123 (1908). The US Supreme Court has stated that the Interstate Compact is a question of Federal Law Cuyler *v.* Adams, *449 U.S. 433* (1981), therefore a question of Federal Law must be determined in Federal Court

Cameron v. Mills, (S.D.Iowa 1986) 645 F. Supp. 1119. States:

> "The injunctive relief should be granted a Liberty Interest is in question… Due Process by the due process clause itself and the laws of the states… It is clear that the Eleventh Amendment does not bar a federal court from granting injunctive relief against state officials on the basis of federal claims Congressional consent is not required for interstate agreements that fall outside the scope of the Compact Clause. Where an agreement is not "directed to the

formation of any combination tending to the increase of political power in the States, which may encroach upon or interfere with the just supremacy of the United States," it does not fall within the scope of the Clause and will not be invalidated for lack of congressional consent. But where Congress has authorized the States to enter into a cooperative agreement, and where the subject matter of that agreement is an appropriate subject for congressional legislation, the consent of Congress transforms the States' agreement into federal law under the Compact Clause. *Cuyler*, 449 U.S. at 440, 101 S.Ct. at 707."

If The Petition for Rehearing En Banc Out of Time By One Day is not granted, Ms. Smith, and her husband, will incur immediate and irreparable harm, including bodily injury or even death since Mr. Smith is totally disabled; from Ms. Smith being incarcerated. The likelihood of success on appeal is likely since this is a question of Federal Law and the US Supreme Court as well as other authoritative

decisions of other United States Court of Appeals that have addressed the same issue, that this is a question of Federal Law and have granted the action requested. Since there has not been an entry of appearance by Appellees there has not been anyone to concur with.

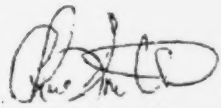
CONCLUSION

WHEREFORE, Appellant, CHERI SMITH respectfully requests that this Court grant The Petition For Rehearing En Banc Out Of Time by One Day be granted and Order and Judgment be Vacated due to the question of Federal Law being raised, for any and all of the foregoing reasons, to enter an order to the State of New Mexico Eleventh Judicial District Court Proceedings (CR 98-935-4), with specification that a permanent injunctive order against all parties including but not limited to State of New Mexico, Chief Deputy Assistant District Attorney, Sandra A Price; State of New Mexico Eleventh Judicial District Court, Honorable William C Birdsall or another; and State of New Mexico Interstate Compact, and State of New Mexico Adult Parole &

Probation enjoining all parties except by legal due process. 2) All reports, an orders issued as a result of the action filed on September 28, 2001 by the State of New Mexico Chief Deputy Assistant District Attorney, Sandra A Price be dismissed with prejudice; including but not limited to Motion to Revoke, Order of Probation, Promissory Note, and warrant issued for failure to appear. 3) That the State of New Mexico, New Mexico Adult Parole & Probation, State District Attorney, and Eleventh Judicial District Court and the officials thereof do not interfere in the State of Arizona supervision, and any contact made shall be by due process pursuant to State of New Mexico State Statues and Department Policies & Procedures. 4) That the terms and conditions that were set by Arlin Chester of State of Arizona Department of Parole & Probation and Arizona Interstate Compact, remain in force and the State of Arizona Interstate Compact Adult Parole & Probation and State of New Mexico Interstate Compact Adult Parole & Probation abide by such, and that the State of New Mexico Chief Deputy Assistant

District Attorney Sandra A Price is prohibited from interference and harassment of Appellant, and that this order further bars Sandra A Price or another from contacting Ms Smith's Employers, stocking Appellate or her family. Ms Smith's also requests such other and further relief as this Court deems just and proper.

Respectfully
Submitted,



Cheri Smith
P O Box 10877
Tempe, AZ 85284

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Smith vs. Birdsall	Case 03-2067

Certificate of Mailing to All Appellees & Interested Parties

1. **State of New Mexico**
   % Bill Richardson
   Governor State of New Mexico
   State Capitol
   Santa Fe, NM 87503

2. **The Honorable William C Birdsall**
   11th Judicial District Court
   103 S Oliver Drive
   Aztec, NM 87410

3. **State of New Mexico**
   Sandra A. Price, Chief Deputy ADA
   % Greg Tucker, San Juan County District Attorney
   710 E 20th St.
   Farmington, NM 87402

4. **State of New Mexico**
   Patricia Madrid
   NM Atty. General Office
   407 Galisteo St. Suite 260
   Santa Fe, NM 87505

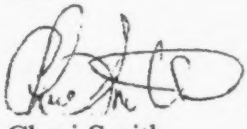
5. **New Mexico Interstate Compact &**
   New Mexico Adult Parole & Probation
   4337 N M Hwy 14 South
   Santa Fe, NM 87508

6. **State of Arizona Interstate Compact**
   Arizona Adult Parole & Probation
   363 N. 1st Avenue
   Phoenix, AZ 85003 [Appellees]

7. **Parole & Probation Compact Administrator's Association**
   % Don LaFratta, President
   Massachusetts Parole Board
   45 Hospital Road, Bldg B3
   Medfield, MA 02052 [Interested Party]

The Petition for Rehearing En Banc Out of Time By One Day was placed in the United States Mail, first class postage prepaid, addressed to all Appellees & Interested Party on this 7th day of July 2003.

By;



Cheri Smith
P O Box 10877
Tempe, AZ 85284-00

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

FILED
United States Court of Appeals Tenth Circuit

JUN 23 2003

PATRICK FISHER
Clerk

CHERI SMITH,

Plaintiff - Appellant,

V.

WILLIAM C. BIRDSALL, Honorable, 11th Judicial District; SANDRA A. PRICE ADA, San Juan County; NEW MEXICO INTERSTATE COMPACT; NEW MEXICO PAROLE & PROBATION; ARIZONA INTERSTATE COMPACT; ARIZONA ADULT PAROLE & PROBATION,

Defendants - Appellees.

No. 03-2067
(D.C. No. CIV-03-84-LFG/WWD)
(D. New Mexico)

ORDER AND JUDGMENT*

* This order is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3

Before **KELLY, BRISCOE** and **LUCERO,** Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Plaintiff Cheri Smith, appearing pro se, appeals the district court's dismissal of her 42 U.S.C. § 1983 complaint. We exercise jurisdiction pursuant to 28 U.S.C. § 1291 and affirm.

Smith filed her § 1983 complaint on January 17, 2003, against a state district judge, a state prosecutor, two state agencies, and two interstate compacts, alleging "[i]llegal search & seizure by district attorney," "due process & perjury," and "due process/ prosecutorial misconduct." ROA Doc. 1. Her claims were the result of a probation revocation

proceeding in state court. The district court denied Smith's motion to appoint counsel, finding there was no constitutional right to counsel in a civil lawsuit. ROA Doc. 9. The court also denied Smith's motion to supplement the record, finding the request "far exceeds the attachments authorized by the local rule." ROA Doc. 15. In dismissing the § 1983 action with prejudice for failure to state a claim, the district court found that the state district judge and the state prosecutor were clothed with absolute immunity, that the state agencies were not "persons" as used in § 1983 (Brandon v. Holt, 469 U.S. 464 (1985)), and that interstate compacts are "laws or agreements adopted by various states." ROA Doc. 13 at 3. The district court further cited Rozatos v. Colorado Supreme Court, 746 F.2d 1429, 1432 (10th Cir. 1984), which states: "A United States District Court has no authority to review final judgments of a state court in judicial proceedings. Such review resides exclusively in the United States Supreme Court." Id. at 4.

Appendix B

On appeal, Smith asserts:

> T . issue is whether a Writ of Mandamus and Immedia . Stay can be issued by the United States District Court for the District of New Mexico or does The Anti-Injunction Act, 28 U.S.C. § 2283 bar such action. The issue also includes the irreparable harm that occurs as a result of the State of New Mexico violating due process. The issue al ncludes whether a state voluntar[ily] waives its E nth Amendment immunity by engaging in activity su. .ect to congressional regulation, and violating the 14th Amendment of Due Process. The issue also includes whether the Interstate Compacts are not persons, but rather, laws or agreements adopted by various states.

Aplt. Br. at 3. Smith also contends the district court should have appointed counsel, and that the court erred in denying her motion to supplement the record.

We have carefully considered the district court's orders, all of Smith's arguments, and the record on appeal. We AFFIRM for substantially the same reasons as set forth in the district court's orders filed January 24, 2003, February 3, 2003, and March 4, 2003. We DENY as moot Smith's "Emergency Motion for an Injunction and Immediate Stay Pending Appeal."

Entered for the Court

Mary Beck Briscoe
Circuit Judge

Appendix B

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

CHERI SMITH

Plaintiff/Petitioner - Appellant,

Case No. 03-2067

v.

HONORABLE WILLIAM C BIRDSALL
ELEVENTH JUDICIAL DISTRICT COURT
STATE OF NEW MEXICO
SANDRA A. PRICE,
ASSISTANT DISTRICT ATTORNEY, SAN JUAN COUNTY,
STATE OF NEW MEXICO
NEW MEXICO INTERSTATE COMPACT &
NEW MEXICO ADULT PAROLE & PROBATION
ARIZONA INTERSTATE COMPACT & ARIZONA ADULT PAROLE & PROBATION

Appellant/Petitioner's Opening Brief

Defendant/Respondent - Appellee.

Appendix B

BEST AVAILABLE COPY

NOTICE AND INSTRUCTIONS

If you proceed on appeal pro se, the court will accept a properly completed Form A-12 in lieu of a formal brief. This form is intended to guide you in presenting your appellate issues and arguments to the court. If you need more space, additional pages may be attached. A short statement of each issue presented for review should precede your argument. Citations to legal authority may also be included. This brief should fully set forth all of the arguments that you wish the court to consider in connection with this case.

New issues raised for the first time on appeal generally will not be considered. An appeal is not a retrial but rather a review of the proceedings in the district court. A copy of the completed form must be served on all opposing counsel and on all unrepresented parties and a proper certificate of service furnished to this court. A form certificate is attached.

APPELLANT/PETITIONER'S OPENING BRIEF

1. Statement of the Case. (This should be a brief summary of the proceedings in the district court.)

The Appellate filed in United States District Court for the District of New Mexico a Motion for a Writ of Mandamus and Immediate Stay, Motion for Appointment of Counsel due to the liberty interest in question, & Motion To Proceed In Forma Pauperis. The Writ of Mandamus was requesting injunctive relief against the State of New Mexico, 11th Judicial District Court , the Honorable William C Birdsall, and State of New Mexico Chief Deputy Assistant District Attorney, Sandra A Price, due to violation of due process and violation of the Interstate Compact (*4* U.S.C. § 112, AZSA 31-467 & NMSA 31-5-20). Appellate also filed Motion to Supplement the Record so the United States District Court for the District of New Mexico should have all legal basis presented, as well as a Motion For Extension of Time to File

Appeal. United States District Court for the District of New Mexico denied the Writ of Mandamus and Immediate Stay for numerous reasons (discussed below), Appointment of Counsel and the Motion to Supplement the Record was also denied, however the Motion For Extension of Time to File Appeal was granted as well as Motion To Proceed In Forma Pauperis.

2. Statement of Facts Relevant to the Issues Presented for Review.

The issue is whether a Parole/Probationer that is granted parole/probation through Interstate Compact for Adult Offender Supervision (*4* U.S.C. § 112) guaranteed by State of New Mexico (N.M.S.A. 31-5-20) to State of Arizona (A.R.S.31-467) if The United States District Court for the District of New Mexico has jurisdiction, under Federal Law. Conditions of Parole/Probation are set by the receiving state and sending state is notified. State of New Mexico Chief Deputy Assistant District Attorney for County of San Juan is

trying to add conditions, which Arizona said, would not be enforced, and initiated a Probation Revocation without due process of law, Federal Law allows the Compact to which Appellate paroled to Arizona. The issue also rose if a state voluntary waives its Eleventh Amendment immunity by engaging in activity subject to congressional regulation, and violating the 14th Amendment of Due Process. The issue also rose is if a liberty interest is at stake should appellant have counsel appointed and if the record should be supplemented. The United States District Court for the District of New Mexico stated "...The *Anti-Injunction Act, 28 U.S.C. §2283*, which prevents federal courts from intervening in state court pro dings "except as expressly authorized by act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its ju gments." *28 U.S.C. § 2283*." The United States District Court for the District of New Mexico indicates that the Appellate desires a review of the record. Appellate does not invite a review of the record, however,

submits as exhibits of the record and what has occurred in the 11th Judicial Court of the State of New Mexico and the Honorable William C Birdsall and the Chief Deputy Assistant District Attorney for the State of New Mexico, Sandra A. Price have taken. The exhibits are essential since it is the evidence that shows the violation of federal law and due process rights of appellate by the State of New Mexico and why the enforcement of this Court is needed "where necessary in aid of its jurisdiction" as stated in the Anti-Injunction Act, *28 U.S.C. § 2283.*

3. Statement of Issues.

a. First Issue:

The issue is whether a Writ of Mandamus and Immediate Stay can be issued by the United States District Court for the District of New Mexico or does The *Anti-Injunction Act, 28 U.S.C. §2283* bar such action. The issue also includes the irreparable harm that occurs as a result of the State of New Mexico violating due process. The issue also includes

whether a state voluntary waives its Eleventh Amendment immunity by engaging in activity subject to congressional regulation, and violating the 14th Amendment of Due Process. The issue also includes whether the Interstate Compacts are not persons, but rather, laws or agreements adopted by various states.

Argument and Authorities:

Writ of Mandamus and Immediate Stay. United States District Court for the District of New Mexico stated "...The Anti-Injunction Act, 28 U.S.C. §2283, which prevents federal courts from intervening in state court proceedings "except as expressly authorized by act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." 28 U.S.C. § 2283." 4 U.S.C. § 112, allows Interstate Compacts, State of New Mexico (N.M.S.A. 31-5-20) and State of Arizona (A.R.S.31-467) are parties to, as well as the Federal Interstate Compact (4 U.S.C. § 112) (U.S. Const., Art. I, § 10, Cl. 3), and the United States

Constitution 14th Amendment (Due Process). The United States Constitution, Art. I, § 10, Cl. 3. Congressional consent transforms such a compact into federal law; therefore it is necessary in aid of its jurisdiction.

A Writ of Mandamus and Immediate Stay is requested when there is an immediate need. Such as irreparable harm if the injunction is not granted. The Appellant has made 9 trips from Arizona to New Mexico over 16 months. Trying to make restitution, fees, essentials, and taking care of disabled spouse. The harm is irreparable, except by the granting of the Writ of Mandamus and Immediate Stay.

The State of New Mexico Chief Deputy Assistant District Attorney of San Juan County initiated, (which is supported by the exhibits), Probation Revocation Proceedings without a referral, from NM Adult Parole & Probation or AZ Adult Parole & Probation, violating federal law and due process. The constitution determines what process is due. When the state itself creates a liberty interest, procedures which the

state develops to protect that interest are required by the due process clause. Cameron v Mills, S.D. Iowa 1986, 645 F. Supp. 1119 held "legislative history indicates that 4 U.S.C. § 112 constitutes congressional consent to interstate corrections compact." The United States Constitution, Art. I § 10, Cl. 3. Congressional consent transforms such a compact into federal law, thus United States District Court for the District of New Mexico has the jurisdiction to intervene, since the State of New Mexico is violating Federal Law Under the Interstate Compact, as well as due process guaranteed by the 14th Amendment of the Constitution of the United States of America and 11th Amendment of the Constitution of the United States of America does not bar a federal court from granting injunctive relief against state official on the basis of federal claims. It is clear that the Eleventh Amendment does not bar a federal court from granting injunctive relief against state officials on the basis of federal claims. Ex Parte Young, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908). That case

held that a suit challenging the constitutionality of a state official's action is not one against the state and that, therefore, such a suit is not barred by the Eleventh Amendment. *Id.* at 160, 28 S.Ct. at 454. The State of New Mexico is also violating The Constitution of the State of New Mexico (Article II § 14, 18, Due process right) (N.M.S.A. 31-5-20) and Constitution of the State of Arizona (Article II § 4, 24, Due process right) (A.R.S.31-467). Cameron v Mills, S.D. Iowa 1986, 645 F. Supp. 1119 held "A person's liberty is equally protected, even when the liberty itself is a statutory creation of the State. When the state itself creates a liberty interest, procedures which the state develops to protect that interest are required by the due process clause.... The touchstone of due process is protection of the individual against arbitrary action of government, *Dent v. West Virginia*, 129 U.S. 114, 123 [9 S.Ct. 231, 233, 32 L.Ed. 623] (1889)." Constitution of the United States 14th Amendment guarantees Due Process, which the State of New Mexico and

officials thereof are violating, therefore waving the 11th Amendment of the Constitution of United States. Jurisdiction rests within the jurisdiction of the United States District Court for the District of New Mexico for the injunctive relief requested.

The United States District Court for the District of New Mexico stated "Interstate Compacts are not persons, but rather, laws or agreements adopted by various states." Interstate Compact for the State of New Mexico and State of Arizona are actual agencies usually found within the Parole & Probation of each respective state. The United States District Court for the District of New Mexico erred when is assumed that the Agency did not exist. The Agency in fact by law controls the movement of offenders that have transferred to another state:

> State of New Mexico N.M.S.A. 31-5-20, Article I, C.
>
> In addition, this compact will:
>
> (1) create an interstate commission that will establish uniform procedures to manage the movement

between states of adults placed under community supervision and released to the community under the jurisdiction of courts, paroling authorities, corrections or other
criminal justice agencies and that will promulgate rules to achieve the purpose of this compact;

(5) coordinate training and education regarding regulations of interstate movement of offenders for officials involved in such activity.

State of Arizona *31-467*, Article I, C. In addition, this compact will:

1. Create an interstate commission that will establish uniform procedures to manage the movement between states of adults placed under community supervision and released to the community under the jurisdiction of courts, paroling authorities, corrections or other criminal justice agencies that will promulgate rules to achieve the purpose of this compact.

5. Coordinate training and education regarding regulations of interstate movement of offenders for officials involved in such activity.

Therefore the injunction should be granted since the Federal Court has jurisdiction to enforce the Interstate Compact, and the State of New Mexico has interfered with the Supervision of Appellant, as well as violating due process rights of Appellant. Appellant is entitled to the relief sought since

Appellant Paroled through Federal Interstate Compact. (U.S. Const., Art. I, § 10, Cl. 3). Injunctive relief should be granted, since it is the remedy available.

b. Second Issue:

When Appointment of Counsel should be provided for any financially eligible Person. Just because a person can make a motion does not mean they have the skills needed to make a legal brief or argument and counsel should be appointed.

Argument and Authorities:

Appointment of Counsel. When Representation shall be provided for any financially eligible

person a charge with a violation of probation pending or who interests or faces loss of liberty interest in question, 18U.S.C. -§3006A(C) (I), Counsel should be appointed. Counsel should have been appointed Just because a person can make a motion does not mean they have the skills needed to make a legal brief or argument. Liberty interests as well as Constitutional rights of Appellate were in question. Just the

skill to make a motion does not make the skills to argue said motion and support thereof. If counsel is appointed the rights of appellate would be protected.

If counsel had been appointed the motion could be properly filed and an appeal would not have been needed. There are numerous case laws in regard to counsel being appointed, being a criminal case filing or civil, does not change the rights of Appellant that have been violated.

c. Third Issue:

Motion to Supplement the Record. The United States District Court for the District of New Mexico ruled against Appellant's Motion to Supplement the Record stating it fails to comply with requirements of D.N.M.LR-CIV 10.5 in that exceeds the attachments authorized by the local rule.

Argument and Authorities:

Motion to Supplement the Record. The United States District Court for the District of New Mexico ruled against Appellant's Motion to Supplement the Record stating it fails

to comply with requirements of D.N.M.LR-CIV 10.5 in that exceeds the attachments authorized by the local rule.

D.N.M.LR-CIV 10.5 states as follows:

> Exhibits to a motion, response or reply, including excerpts from a deposition, must not exceed fifty (50) pages, unless all parties agree otherwise. If agreement cannot be reached, then the party seeking to exceed the page limit must file a motion in accordance with D.N.M.LR-CIV 7.

The record will indicate that the Motion was stamped and all parties served certified and filed in accordance of D.N.M.LR-CIV 7, service was sent to the United States District Court for the District of New Mexico. The record should be supplemented so that the United States District Court for the District of New Mexico could review any subjects which need clarification. A question of law should always be clear. When a question of law pertains to the civil

rights of anyone the record should be clear enough to prevent damages. Damages such as financial, emotional, or even false imprisonment should be prevented. Whether the case is filed civil or criminal there are civil rights that pertain to all parties and justice should not be delayed for lack thereof.

4. Do you think the district court applied the wrong law? If so, what law do you want applied?

United States District Court for the District of New Mexico applied the incorrect law. This would come under The Anti-Injunction Act, 28 U.S.C. §2283.... "where necessary in aid of its jurisdiction". Appellant is entitled to the relief sought since Appellant Paroled through Federal Interstate Compact, (U.S. Const., Art. I, § 10, Cl. 3). Congressional consent transforms such a compact into federal law, thus U.S. District Court has the jurisdiction to intervene, since the State of New Mexico is violating Federal Law Under the Interstate Compact, as well as due process guaranteed by

the 14th Amendment of the Constitution of the United States of America and 11th Amendment of the Constitution of the United States of America does not bar a federal court from granting injunctive relief against state official on the basis of federal claims.

5. Did district court incorrectly decide the facts? If so, what facts?

The United States District Court for the District of New Mexico incorrectly decided the facts. The issue is that Appellant paroled to Arizona from New Mexico through The Interstate Compact (*4* U.S.C. § 112) for Supervision of Adult Parole & Probations guarantees that the states (Arizona (A.R.S.31-467) and New Mexico (N.M.S.A. 31-5-20) will comply with the Compact, Rules, & Regulations for Supervision. There has not been revocation by Arizona, Due Process guaranteed under the 14th Amendment of the U S Constitution. State of New Mexico Chief Deputy Assistant District Attorney, Sandra A Price initiated this proceeding

violating due process, and interfering in Federal Law. A summons was sent from the Court, no reports or finding of facts were completed by Parole or Probation.

6. Did the district court fail to consider important grounds for relief? If so, what grounds?

The issue that the United States District Court for the District of New Mexico stated is that The *Anti-Injunction Act, 28 U.S.C. §2283*, which prevents federal courts from intervening in state court proceedings "except as expressly authorized by act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." *4 U.S.C. § 112, allows* Interstate Compacts, and State of New Mexico and State of Arizona are parties to the Federal Interstate Compact and the Constitution of the United States *14th Amendment Due Process).* 11th Amendment of the Constitution of the United States of America does not bar a federal court from granting injunctive relief against state official on the basis of federal claims. Federal Court has jurisdiction due to the

Interstate Compact and the Due Process rights of Appellant. Injunctive relief is the only remedy available.

7. Do you feel that there are any other reasons why the district court's judgment was wrong? If so, what?

The United States District Court for the District of New Mexico erred when it stated "the Interstate Compact are not persons, but, rather, laws or agreements adopted by various states." Arizona (A.R.S.31-467) and New Mexico (N.M.S.A. 31-5-20) Both States have laws, enacted under 4 *U.S.C. § 112* and setting up the Agency within the respective States usually found in the Adult Parole & Probation Departments.

8. What action do you want this court to take in your case?

Appellate would request 1) this Court Grant The Writ of Mandamus and Immediate Stay, with specification that a permanent injunctive order against all parties including but not limited to Sandra A Price, Chief Deputy Assistant District Attorney of San Juan County, New Mexico; Honorable William C Birdsall, 11th Judicial District Court, of

San Juan County, New Mexico; and New Mexico Interstate Compact, and New Mexico Adult Parole & Probation restraining all parties except by legal due process. 2) All reports, an orders issued as a result of the action filed on September 28, 2001 be dismissed with prejudice; including but not limited to Motion to Revoke, Order of Probation, Promissory Note, and warrant issued for failure to appear. 3) That the State of New Mexico and the officials thereof do not interfere in the State of Arizona supervision, and any contact made shall be by due process. 4) That the terms and conditions that were set by Arlin Chester of Arizona Department of Parole & Probation, remain in force and the State of Arizona and State of New Mexico abide by such, and that the Chief Deputy Assistant District Attorney of San Juan County, New Mexico is prohibited from interference therein.

9. Do you think the court should hear oral argument in this case? If so, why?

Oral argument is only requested should the Court feel that more clarification is required. If the facts presented explain

that Federal Law regulates Interstate Compact and the issue is the violation of Appellant's Constitutional Rights including but not limited to due process by the Honorable William C Birdsall, 11th Judicial District Court and Chief Deputy Assistant District Attorney San[illegible] A Price, San Juan County, State of New Mexico.

Date Signature

Appendix B

CERTIFICATE OF SERVICE

I hereby certify that on _____April 22, 2003_____ I sent a copy of the Appellant/Petitioner's Opening Brief to __State of New Mexico, Attorney General and all other interested parties listed below, at the last known address, by United States mail or courier.

_____ _____

Date Signature

1. State of New Mexico
   % Bill Richardson
   Governor State of New Mexico
   State Capitol
   Santa Fe, NM 87503
2. The Honorable William C Birdsall
   11th Judicial District Court
   103 S Oliver Drive
   Aztec, NM 87410
3. State of New Mexico
   Sandra A. Price, Chief Deputy ADA
   % Greg Tucker, San Juan County DA
   710 E 20th St.
   Farmington, NM 87402
4. State of New Mexico
   Patricia Madrid
   NM Atty. General Office
   407 Galisteo St. Suite 260

Appendix B

Santa Fe, NM 87505

5. New Mexico Interstate Compact &
New Mexico Adult Parole & Probation
4337 N M Hwy 14 South
Santa Fe, NM 87508

6. State of Arizona Interstate Compact
Arizona Adult Parole & Probation
363 N. 1st Avenue
Phoenix, AZ 85003 [Appellees]

Appendix B

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

PRO SE DOCKETING STATEMENT

INSTRUCTIONS: Appellant must complete the entire docketing statement form and attach copies of the following documents: (1) the notice of appeal; (2) the order or judgment being appealed; and (3) any written findings, conclusions or order of the trial court relating to the order of judgment being appealed. The completed docketing statement, together with the attachments, must be filed with the clerk of the court of appeals within 10 days after filing the notice of appeal. A copy of the completed docketing statement, with attachments, must be served on all opposing parties or their counsel. Proof of service must be provided. You must complete the certificate of service which is part of this form.

1. Your name, address, including registration number if applicable:

Cheri Smith, P O Box 10877, Tempe, NM 85284-0015

2. Title and number of district court case:

Petition for Writ of Mandamus & Immediate Stay District Court Civil Case # 03 CV84

3. Name of the district court: U.S. District Court for the District of New Mexico (Albuquerque)

4. The dates on which the district court order and your notice of appeal were filed:

Notice of Appeal Filed 3/5/03; Order Filed 2/3/03; &

Amended Notice of Appeal Filed 3/17/03; Order Filed 03/04/03_____

5. Type of action:

_____ Habeas corpus

_____ § 2255 motion

_____ Motion to reduce sentence

_____ Civil action for damages

_____X__ other Due Process 14th Amendment & Civil Rights 42 U.S.C.§ 1983

6. State briefly the relief you requested in the district court and the reasons why you are entitled to such relief: For U.S. District Court to issue A Writ of Mandamus and Immediate Stay in the proceedings in the State of New Mexico 11th Judicial District Court. The Chief Deputy Assistant District Attorney initiated Probation Revocation Proceedings without a referral from NM Adult Parole & Probation or AZ Adult Parole & Probation. Appellant is entitled to the relief sought since Appellant Paroled through FEDERAL INTERSTATE COMPACT which is granted through *4 U.S.C. §112*, thus U.S. District Court has the jurisdiction to intervene, since the State of New Mexico is violating Federal Law Under the Interstate Compact, and *11th Amendment* does not bar a federal

court from granting injunctive relief against state official on the basis of federal claims. Appointment of Counsel. When a Liberty interests or loss of liberty is in question a charge with a violation of probation pending, (18U.S.C. -§3006A *(C)*), Counsel should be appointed. Counsel should have been appointed Just because a person can make a motion does not mean they have the skills needed to make a legal brief or argument. Motion To Supplement The Record the Appellant is not an attorney, and Counsel was denied appointment, the Appellant should be allowed to supplement the record to clarify the issues. The motion and documents were processed by the rules of D.N.M.L.R-Civ. 10.5.

7. State briefly the reasons why you feel the decision of the district court should be

reversed:

The Constitution of the United States of America, Constitution of the State of New Mexico, and Constitution of the State of Arizona are the foundation of which our Civil Rights as well as Civil Liberties are based. These guarantees mandate protection. The State of New Mexico by the action of their Officers have violated the civil rights and

liberties afford to the appellant under The Constitution of the United States of America, Constitution of the State of New Mexico, and Constitution of the State of Arizona. The Writ of Mandamus and immediate stay should be granted since the very basis of which are found under the United States Constitution.

8. Did you have a hearing in the district court?

___No___

_____ 03/14/03__

Signature Date

CERTIFICATE OF SERVICE

I, ___Cheri Smith_____ hereby certify that on
[Appellant/petitioner]
_03/14/03__ I sent a copy of the foregoing Pro Se Docketing

Statement, to:

1. State of New Mexico
   % Bill Richardson
   Governor State of New Mexico
   State Capitol
   Santa Fe, NM 87503

2. The Honorable William C Birdsall
   11th Judicial District Court
   103 S Oliver Drive
   Aztec, NM 87410

3. State of New Mexico
   Sandra A. Price, Chief Deputy ADA
   % Greg Tucker, San Juan County DA
   710 E 20th St.
   Farmington, NM 87402

4. State of New Mexico
   Patricia Madrid
   NM Atty. General Office
   407 Galisteo St.
   Suite 260
   Santa Fe, NM 87505

5. New Mexico Interstate Compact &
   New Mexico Adult Parole & Probation
   4337 N M Hwy 14 South
   Santa Fe, NM 87508

6. State of Arizona Interstate Compact
   Arizona Adult Parole & Probation

363 N. 1st Avenue
Phoenix, AZ 85003
[Appellees]

At the listed last known address, by way of Unit[illegible] States mail or courier.

Signature

March 14, 2003
Dated signed

CHERI SMITH

P O BOX 10877

TEMPE, AZ 85284-0015

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

CHERI SMITH

Plaintiff CIVIL. NO. 03-0084 LFG/WWD

Vs

HONORABLE WILLIAM C BIRDSALL
ELEVENTH JUDICIAL DISTRICT COURT
STATE OF NEW MEXICO
SANDRA A. PRICE, ASSISTANT DISTRICT
ATTORNEY, SAN JUAN COUNTY,
STATE OF NEW MEXICO
NEW MEXICO INTERSTATE COMPACT &
NEW MEXICO ADULT PAROLE & PROBATION
ARIZONA INTERSTATE COMPACT & ARIZONA
ADULT PAROLE & PROBATION

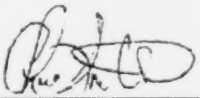
Defendant,

AMENDED NOTICE OF APPEAL

Notice is hereby given that Cheri Smith, Plaintiff, appearing pro se and layman at law, hereby appeals to the United States

Court of Appeals for the Tenth Circuit from the ORDER DENYING MOTION TO SUPPLEMENT RECORD, BUT GRANTING AN EXTENSION OF TIME TO FILE AN APPEAL entered in this action on March 4, 2003.

Dated this 14th day of March, 2003

By: 

Cheri Smith
P O Box 10877
Tempe, AZ 85284-0015
480-812-9703
crsmith82@yahoo.com

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

CHERI SMITH

vs. CIVIL NO. 03-84 LFG/WWD

WILLIAM C. BIRDSALL et al,

Defendants

ORDER DENYING MOTION TO SUPPLEMENT RECORD, BUT GRANTING AN EXTENSION OF TIME TO FILE AN APPEAL

THIS MATTER is before the Court on Plaintiff's Motion to Supplement the Record and Motion for Extension of Time To File Appeal [Doc 14]. The motion to supplement the record is denied as it fails to comply with the requirements of D.N.M.L.R. Civ. 10.5 in that it far exceeds the attachments authorized by the local rule.

The Court determines that Plaintiff is a pro se litigant and may need additional time to secure the services of counsel. As this motion is filed within the 30-day deadline to file a notice of appeal, only "good cause need be shown."

Fed. R. App. P. 4(a)(5)(A)(ii).

The Court concludes that good cause has been shown and extends by 15 days the deadline for filing a notice of appeal.

IT TS SO ORDERED.

Chief United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

CHERI SMITH

Plaintiff CIVIL. NO. 03-0084 LFG/WWD

Vs

HONORABLE WILLIAM C BIRDSALL
ELEVENTH JUDICIAL DISTRICT COURT
STATE OF NEW MEXICO
SANDRA A. PRICE, ASSISTANT DISTRICT
ATTORNEY, SAN JUAN COUNTY,
STATE OF NEW MEXICO
NEW MEXICO INTERSTATE COMPACT &
NEW MEXICO ADULT PAROLE & PROBATION
ARIZONA INTERSTATE COMPACT & ARIZONA
ADULT PAROLE & PROBATION

Defendant,

NOTICE OF APPEAL

Notice is hereby given that Cheri Smith, Plaintiff, appearing pro se and layman at law, hereby appeals to the United States

Court of Appeals for the Tenth Circuit from the

MEMORANDUM OPINION AND ORDER GRANTING

LIMITED WAVIER OF COSTS BUT DISMISSING

LAWSUIT WITH PREJUDICE entered in this action on

February 3, 2003.

Dated this 4th day of March, 2003

By: _____

Cheri Smith
P O Box 10877
Tempe, AZ 85284-0015
480-812-9703
crsmith82@yahoo.com

UNITED STATES DISTRICT COURT
IN THE U^NITED STATES DISTRICT COURT
ALBUQUERQUE, NEW ,'.MEXICO

FOR THE DISTRICT OF NEW MEXICO

FEB **0 3** 2003

CLERK

CHERI SMITH,

plaintiff,

vs.
WILLIAM C. BIRDS ALL et al., Defendants,

CIVIL NO. 03-84 LFG/WWD

MEMORANDUM OPINION AND ORDER GRANTING LIMITED WAIVER OF COSTS, BUT DISMISSING LAWSUIT WITH PREJUDICE

Waiver of Filing Fee

Plaintiff, Cheri Smith ("Smith"), seeps the Court's order authorizing her to proceed with this litigation without the payment of costs and fees. The *informa pauperis* statute, 28 U.S.C. § 1915, authorizes a court to waive those fees. *The* intent of this statute is to guarantee

that "No citizen shall be denied an opportunity to commence, prosecute, or defend an action, civil or criminal, in any court in the United States solely because. .. [lack of funds] makes it impossible for him to pay or secure the costs [of litigation]." Adkins v. E.I. DuPont de Nemours & Co. 335 U.S. 331, 342, 69 S. Ct. 85; 90 (1948).

Smith submits an affidavit indicating that she is unemployed and owns no assets that can be used to satisfy the costs of litigation. Smith is married and did not disclose her husband's income. Nonetheless, Giving Smith the benefit of the doubt, the Court *will* authorize the filing of her complaint without the payment of a filing fee.

SUA SPONTE ANALYIS

While Congress removed the barriers to court process for indigents by enacting the *informa pauperis* statue. Congress also recognized that "a litigant whose filing fees and court costs are

assumed by the public, unlike a paying litigant lacks an economic incentive to refrain from filing frivolous, malicious, or repetitive lawsuits." Neitzke v Williams, 490 U. S. 319, 324, 109 S. Ct. 1827, 1831 (1989); Denton v. Hernandez, 504 U.S. 25, 31, 112 S. Ct. 1728, 1733, (1992). In response to this Congressional concern, courts were specifically authorized to review and, where appropriate, to dismiss an *informa pauperis* complaint " if the court determines..... The action is frivolous or malicious." 28 U.S.C. § 1915 (e)(2)(B)(i). Accordingly, the court may conduct a *sua sponte* review of a complaint pursuant to this section and may dismiss the complaint if it is parentally obvious that the plaintiff cannot prevail on the facts alleged. Hall v Bellman, 935 F.2d 1106, 1109 (10th Cir. 1991).

In reviewing a *pro se* complaint, the court is to apply the same legal standards applicable to

pleadings drafted by counsel, but the court remains mindful that a *pro se* complaint must be liberally construed. Northington v. Jackson, 973 F.2d 1518, 1520; 1521 (10th Cir. 1992). It is with theses standards in mind that the court reviews Smith's complaint.

Smith's complaint will not withstand scrutiny under Fed. R. Civ. P.12(b)(6). Her form complaint asserts a 42 U.S.C. § 1983 cause of action against a state district judge, a state prosecutor, two state agencies, and two interstate compacts. Smith's claims against the defendants grow out of a probation revocation proceedings in State District Court, but are vague and unclear. It is axiomatic that Smith's claims against trial judge give no rise to liability under the doctrine of judicial immunity. Stump v Sparkman 435 U.S. 349, 359, 98 S. Ct. 1099 (1978): Pierson v. Ray,

386 U.S, 547,553-554; 87 S. Ct. 1213 (1967).

> So. too, Smiths claims against the named prosecutor must necessarily fail.
>
> It is well established that prosecutors are absolutely immune from suit under Section 1983 concerning activities associated with the judicial process. such as initiating or pursuing criminal prosecutions. It is also well established that this absolute prosecutorial immunity extends o state attorneys and agency officials who perform functions analagous to those of a prosecutor .. .

Collins v. Johnson County Kansas, 200 3 WL 42'164 at *2 (10th Cir. 2003)(*citing Pfeifer v.* Hartford Fire Insurance Co., 929 F.2d 1484, 1489 (10th Cir. 1991)).

Smith's complaint names two State agencies, but does not name any individual allegedly responsible for the denial of her constitutional rights. Suits against states are not actionable under 1983 because a state is not a person for purposes of § 1983_ Will v. Michigan Dept. of State Police, 491 U.S. 58, 109 S. Ct. 2304 (1989). State officials acting in

an official capacity are not persons under § 1983 and are therefore not amenable to suit. Brandon v. Holt, 469 U.S. 464, 105 S. Ct. 873 (1985), Finally; Smith's attempts to sue the interstate compacts in force in Arizona and New Mexico must also fail. Interstate compacts are not persons, but, rather, laws or agreements adopted by various states.

In sum, Smith's claims simply do not state a cause of action and should be dismissed.

The gravamen of Smith's complaint, however, is made clear in the Petition for Writ of Mandamus and Request for Immediate Stay, which she filed contemporaneously with the complaint. It is clear that Smith seeks to have this Court enjoin various state court criminal proceedings before State District Judge William n C. Birdsall, and, apparently, proceedings before the New Mexico Court of Appeals.

Smith invites this Court to review a State court revocation of probation proceeding. This is impermissible. "A United States District Court has no authority to review final judgments of a state court in judicial proceedings. Such

review resides exclusively in the United States Supreme Court." Rozatos v. Colorado Supreme Court. 746 F.2d 1429; 1432 (10th Cir. 1984)(*citing* 28 U.S.C. *§ 1257) cent. denied. 471 U. S* 101$ (1985). Thus, this Court must decline Smith's invitation.

Smith. contends that certain constitutional rights have been denied her as a result of actions by a district attorney and trial judge relating to ongoing criminal proceedings. Thus, it is clear that Smith seeks to attack the processes, orders and judgment of a State district court, and this Court simply lacks authority to entertain Smith's claim. Moreover, Smith requests injunctive relief directed against State judges and State court proceedings. Smith's request for an injunction is barred by provisions of the Anti-Injunction Act, 28 U.S.C § 2283, which prevents federal courts from intervening in state court proceedings except as expressly authorized by act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.' 28 U.S.C. § 2283.

As the Supreme Court described the operation of the

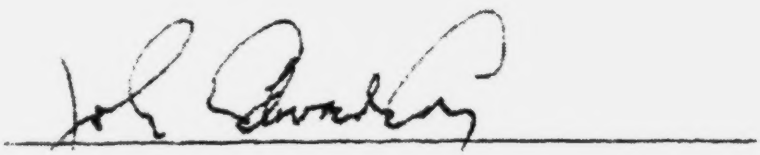
Act, "[S]uffice it to say that the Act is .in absolute prohibition against any injunction *or any* state-court proceedings, unless the injunction falls within one of the three specifically defined exceptions in the Act." Vendo Company v. Lektro Vend Corp., 433 U.S. 623. 630.97 S. Ct. 2881, 2387 (1977). Here, S ı's request for injunctive relief does not fall within any of the exceptions defined in the Act, and therefore her request for relief may not be enter rained.

While Smith couches some of her complaints as constitutional challenges concerning search and seizure, it is clear that those are the kinds of challenges that should be presented to the trial judge hearing her case.

In light of these conclusions, the Court determines that to the extent Smith seeks to enjoin a State judge or State appellate court from proceeding with State criminal proceedings, her case should be dismissed with prejudice.

IT IS THEREFORE ORDERED that Smith's Request for waiver of costs is granted, that the Complaint and Petition

for Mandamus and Stay be filed; and, that all of Smith's claims are dismissed with prejudice.



UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

CHERI SMITH,

Plaintiff,

vs.

CIVIL NO. 03-84 LFG/WWD

WILLIAM C. BIRDSALL et al,

Defendants.

ORDER DENYING MOTION TO SUPPLEMENT RECORD.BUT GRANTING AN EXTENSION OF TIME TO FILE AN APPEAL

IS MATTER is before the Court on Plaintiff's Motion to Supplement the Record and Motion for Extension of Time to File Appeal [Doc. 14]. The motion to supplement the record is denied, as it fails to comply with the requirements of D.N.M.LR-Civ. 10.5 in that it far exceeds the attachments authorized by the local rule.

The Court determines that Plaintiff is *a pro* se litigant and may need additional time to secure the services of counsel. As this motion is filed within the 30-day deadline to file a notice of appeal, only "good cause need be shown." Fed. R. App. P. 4(a)(5)(A)(ii).

The Court concludes that good cause has been shown and extends by 15 days the deadline for filing a notice of appeal.

IT IS SO ORDERED.

Lorenzo Garcia
Chief United States Magistrate Judge

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

October 29, 2002

NO. 27,751

CHERI SMITH,

Petitioner,

V.

HON. WILLIAM C. BIRDSALL,
STATE OF NEW MEXICO,
NEW MEXICO INTERSTATE COMPACT,
NEW MEXICO ADULT PAROLE & PROBATION and
DEPARTMENT OF CORRECTIONS,

Respondents .

ORDER

WHEREAS, this matter came on for consideration by the Court upon Motion for reconsideration, and the Court having considered reconsideration said motion, and being sufficiently advised, Justice Pamela B. Minzner, Justice Petra Jimenez Maes, and Justice Paul Kennedy concurring;

NOW, THEREFORE, IT IS ORDERED that the motion for reconsideration hereby is DENIED.

IT IS SO ORDERED.

WITNESS, The Hon. Patricio M. Serna, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 29th day of October, 2002.

Madeline Garcia

Madeline Garcia, Chief Deputy Clerk

ATTEST: A TRUE COPY

Madeline Garcia

Clerk of the Supreme Court
of the State of New Mexico

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

No. 27,751

CHERI SMITH

Petitioner, Pro Se

HONORABLE WILLIAM A. BIRDSALL
STATE OF NEW MEXICO
NEW MEXICO INTERSTATE COMPACT &
NEW MEXICO ADULT PAROLE & PROBATION &
DEPARTMENT OF CORRECTIONS

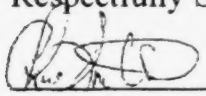
Respondents

MOTION FOR RECONSIDERATION

COMES NOW the Petitioner, Cheri Smith, Pro se and layman at law. Respectfully requests this Court to: Considered this Motion for Reconsideration in the Above Entitled Case, Petition for Writ of Mandamus and Request for Immediate Stay. In support of this motion, the Petitioner offers the following:

1. The Decision of the Supreme Court is in direct conflict with case law already decided by the Supreme Court.
2. A significant question of law is involved.
3. The Petition involves an issue of substantial public interest that should be determined by the Supreme Court.
4. A Matter of Civil Rights has been brought before the Court, a violation thereof.

Respectfully Submitted,



Cheri Smith, Petitioner, Pro Se

CERTIFICATE OF SERVICE

I hereby certify that I mailed a true copy of the foregoing

Motion for Reconsideration to:

1. 11th Judicial District Court
   103 S Oliver Drive
   Aztec, NM 87410

2. San Juan County DA
   Greg Tucker
   710 E 20th St.
   Farmington, NM 87402

3. Alan Whitehead
   4004 East 30th St.
   Farmington, NM 87402

4. NM Atty. General Office
   P O Box 1508
   Santa Fe, NM 87504-1508

5. Celeste Casias
   New Mexico Interstate Compact &
   New Mexico Adult Parole & Probation
   New Mexico Dept of Corrections
   P O Box 27116
   Santa Fe, NM 87502

The foregoing items were mailed by U.S. Mail, on October 25, 2002.

By_____
Cheri Smith, Petitioner, Pro Se

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

October 24, 2002

NO. 27,751

CHERI SMITH,

Petitioner,

HON. WILLIAM C. BIRDSALL,

STATE OF NEW MEXICO,
NEW MEXICO INTERSTATE COMPACT,
NEW MEXICO ADULT PAROLE & PROBATION and
DEPARTMENT OF CORRECTIONS ,

Respondents.

ORDER

WHEREAS, this matter came on for consideration by the Court upon Petition for Writ of Mandamus, and Request for Stay, and the Court having considered said petition and request, and being sufficiently advised, Justice Pamela B. Minzner, Justice Petra Jimenez Maes, and Justice Paul J, Kennedy concurring;

NOW, THEREFORE, IT IS ORDERED that the

Petition, and Request for Stay hereby are denied.

IT IS SO ORDERED.

WITNESS, The Hon. Patricio M. Serna, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 24th day of October, 2002.

Madeline Garcia

Madeline Garcia, Chief Deputy Clerk

(SEAL)

ATTEST: A TRUE COPY

Madeline Garcia

Clerk of the Supreme Court,
of the State of New , Mexico

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

CHERI SMITH

Petitioner, Pro Se S. Ct. No.27,751

V

HONORABLE WILLIAM A. BIRDSALL
STATE OF NEW MEXICO
NEW MEXICO INTERSTATE COMPACT &
NEW MEXICO ADULT PAROLE & PROBATION &
DEPARTMENT OF CORRECTIONS

Respondents CR98-935-1
District Court No.

PETITION FOR WRIT OF MANDAMUS
AND
REQUEST FOR IMMEDIATE STAY

COMES NOW the Petitioner, Cheri Smith, Pro se and layman at law. Respectfully Petitions this Court to:

1. Assume jurisdiction in this matter and issue a Write of Mandamus to the Respondents and to enter the appropriate orders requested herein;
2. Issue an Immediate Stay to the proceedings below pending resolution of this Petition in this Court or in the alternative stay the taking and using of evidence in the

court below pending this Court's resolution on the Petition.

REASONS FOR GRANTING THE WRIT OF MANDAMUS & IMMEDIATE STAY

Authority is granted to hear this Writ is by *the Constitution of the State of New Mexico, Adopted January 21, 1911, Article 6, Sec 3,*

> "The supreme court shall have original jurisdiction in quo warranto and mandamus against all state officers, boards and commissions, and shall have a superintending control over all inferior courts; it shall also have power to issue writs of mandamus, error, prohibition, habeas corpus, certiorari, injunction and all other writs necessary or proper for the complete exercise of its jurisdiction and to hear and determine the same. Such writs may be issued by direction of the court, or by any justice thereof. Each justice shall have power to issue writs of habeas corpus upon petition by or on behalf of a person held in actual custody. and to

make such writs returnable before himself or before the supreme court, or before any of the district courts or any judge thereof."

On November 17, 2000, The New Mexico Appellate Court issued A Memorandum Opinion Case Number 21,129. On November 20, 2000, the 11th Judicial District Court entered the Memorandum into the Record; a Copy also went to The New Mexico Attorney General. On November 13, 2001, a hearing was held in the 11th Judicial District Court, Judge William Birdsall presiding. State of New Mexico San Juan County District Attorney Sandra A Price files a Motion to Revoke Probation on September 28, 01, and a hearing was held on November 13, 2001. Petitioner had paroled to Arizona. There was no referral from Arizona or New Mexico for Revocation of Probation. In this hearing the Petitioner, Cheri Smith advised Judge William Birdsall that there was an Order from the Appellate to dismiss the charge, which would result in (6) Six months of her sentence being dismissed.

Petitioner advised Judge Birdsall that this had not been done. It is read into the record (Exhibit 43 Page 4, Line 6)

> Judge William Birdsall - "....I have a copy of that. The State will need to do an amended Judgment & Sentence that reflects the- I think they in effective dismissed it. I'm not sure."
> Assistant District Attorney Sandra A Price - " Yes, we did your Honor."
> Judge William Birdsall -" Let's go ahead and do an amended Judgment & Sentence that would reflect that so we'll have a clean slate on that."

The : ıended Judgment & Sentence are entered on December 4, 2001. An Order of Probation is signed on November 6, 01, by Defendant, however it includes the 6 months that should have been dismissed as well as Interstate Compact Law (Exhibit 48 & 49) being violated. On November 15, 01, Judge William Birdsall signs the illegal order of Probation. (Exhibit 28 & Exhibit 29) 11th Judicial District Judge William Birdsall has allowed (8) eight revocations hearings to continue knowing he had not signed the Order Probation until November15, 2001 The District Attorney has not seen a referral to revocate from Adult Parole & Probation. Probation was not completed until February

2002 to Arizona (Exhibit 40).

GENERAL ATOMIC COMPANY v. FELTER, *90 N.M. 120* (1977) *560 P.2d 541*

> "New Mexico Const. art. 6, § 3 grants to this Supreme Court the power to issue writs of mandamus, error, prohibition, habeas corpus and "all other writs necessary or proper for the complete exercise of its jurisdiction . . .." Prohibition is an extraordinary remedy which is granted only in limited circumstances at the discretion of the Court and is properly invoked to prevent an inferior court from acting either without jurisdiction or in excess of its jurisdiction. *State ex rel. Harvey v. Medler,* District Judge, 19 N.M. 252, 142 P. 376 (1914); *Cal-M, Inc. v. McManus,* 73 N.M. 91, 385 P.2d 954 (1963); *State v. Tackett,* 68 N.M. 318, 361 P.2d 724 (1961); *State v. Carmody,* 53 N.M. 367, 208 P.2d 1073 (1949). This writ should be issued sparingly and only where

irreparable harm, extraordinary hardship, costly delays, or unusual burdens of expense would result"

The irreparable harm, extraordinary hardship, and unusual burdens are surmounting since the expenses the Petitioner and her family have incurred as a result of having to borrow money to hire counsel, legal expenses, traveling (8 trips) from Arizona to New Mexico for revocation hearings. The Assistant District Attorney, Sandra A Price ' a Motion, which had no basis since the Adult Parole & Probation Department, did not do a referral (due process). The Order of Probation (Exhibit 29) includes the 6 months the Court of Appeals Dismissed and violates New Mexico Interstate Compact Rules & Regulations (Exhibit 48-49) which allows Arizona to determine my terms of Parole & Probation.

ANALYSIS & BACKGROUND

Defendant was taken before grand jury October 1998, and November 1998. The first grand jury resulted in Charges filed in case 98-899-6, the second Grand Jury resulted in

Charges filed in case 98-935-1. Case 98-899-6 was dismissed due to 5-604, time element, June 2000. The State added charges from CR 98-899-6 to the second Case No CR98-935-1 (Exhibit 41, Court Transcript of 7/1/99). The charges in both cases were from the continuing act. The Defendant was tried in 11th Judicial District Court August 1999. The Defendant was convicted of Embezzlement and Fraud, both Third Degree Felonies, and a Misdemeanor Charge of Acting as an Insurance Consultant without a License. Defendant was sentenced February 07, 2000, Judgment & Sentence (Exhibit 1). On February 23, 2000, Defendant turned herself in to serve her sentence. On February 23,2000 Notice of Appeal was given. (Exhibit 2). The Court of Appeals final disposition of the case was November 17, 2000. The Appellate Court's Order (Exhibit 3) instructs 11th Judicial District Court to dismiss the Misdemeanor Charge of Consulting without a License. February 7, 2001 Defendant is released from New Mexico Woman's Correctional Facility, with Parole approved through Interstate Compact to the State

of Arizona. (Exhibit 4) Interstate Compact Cooperative Report 02/08/01 (Exhibit 5) was sent to New Mexico Adult Parole & Probation/New Mexico Interstate Compact/ Department of Corrections. Terms & Conditions imposed by Arizona are included (Exhibit 6). Exhibit 5 addresses the Judgment & Sentence order of February 7, 2000.

> "Defendant shall provide signed documentation from any future employer indicated that he/she is aware that the Defendant has been convicted of a felony involving a crime of dishonesty."

In Exhibit 5 Third Paragraph Arizona states:

> " On Page 2 of New Mexico's Investigation Request, there is a request involving the offender's criminal record and copies of this to be signed by prospective employers..."Arizona does not require employers to see an offenders record..."
> "Would New Mexico please send this officer the information offender Smith needs on where and when to start her court ordered payments."

The Interstate Compact allows the Conditions of Parole & Probation to be addressed by the receiving state; the sending state shall conform to these changes. *UNITED STATES v. WOODWARD*, 469 U.S. 105 *(1985)*, 726 F.2d 1320 *(9th Cir. 1983)*

Exhibit 48- Section 2-110 (A) in part:

> "Any Receiving State which choose not to enforce or is not able to enforce a special condition placed upon a parolee or probationer by the sending state shall notify the sending state, as soon as is possible, that the special condition will not be enforced."

Exhibit 49- Section III- Eligibility for Supervision (C):

> "Offenders will comply with the conditions of supervision imposed by both sending and receiving states. The receiving state may impose its own special conditions and shall notify the sending state of such condition as soon as possible. If the receiving state chooses not to, or is unable to enforce a condition of supervision imposed by the sending state, the receiving state shall notify the sending state immediately."

Arizona Interstate Compact Adult Parole & Probation did as the Law requires, New Mexico Interstate Compact Deputy Administrator (Exhibit 18 & 39) verifies that this was done, and that New Mexico could not violate my Probation. However a Motion to Revoke is filed by the Assistant District Attorney, Sandra A Price, violating fundamental fairness under the due process.

Exhibit 18 from New Mexico Interstate Compact Deputy

Administrator Celeste Casias States:

> "Assistant District Attorney in Farmington had filed a petition to revoke your probation Ms. Standerwick stated she had nothing to do with the petition and that the ADA had initiated this action".... "You asked me to contact Ms. Sandra Price, ADA in San Juan County, I did so at your request. I informed Ms. Price as to what occurred with your probation and miscommunication between the Probation Office, the Parole Office and Interstate Compact. Ms Price informed me that she was not seeking revocation of your probation that she wanted clarification and a promissory note signed as to your restitution."

New Mexico wants a promissory note signed for restitution, however, this was never presented to petitioner, and when it was petitioner was told she had to sign.

U.S. v. DIAMOND, 969 F.2d 961 *(10th Cir. 1992):*

"Although a restitution order is characteristically similar to a civil judgment in that it compensates a victim for losses and remains enforceable at civil law, the court cannot convert a criminal sentence into a civil judgment. United States v. Snider, 957 F.2d 703, 707 (9th Cir. 1992) (quoting United States v. Ciambrone, 602 F. Supp. 563, 568 (S.D.N.Y. 1984)). Where a court orders restitution under the VWPA, it "may not require the defendant to execute a consent judgment or otherwise require him to secure payment `during and after the period of probation." United States v. Joseph, 914 F.2d 780, 786 (6th Cir. 1990). Although a court may require a defendant to make restitution under the VWPA "within a specified period or in specified installments," 18 U.S.C. § 3663(f)(1) (1988), the duration of such period or the last such installment "shall not be later than- (A) the end of the period of probation, if probation is ordered." Id. at § 3663(f)(2)(A)."

Arizona spoke to State of New Mexico District Attorney and Farmington Adult Parole & Probation Office indicating we needed clarification on where to send restitution. (Exhibit 12) The Defendant contacted New Mexico Interstate Compact requesting verification to which the restitution goes to since Defendant had not been notified. Defendant receives return call from Interstate Compact whom the New Mexico Adult Parole & Probation Officer is in Farmington. October 5, 2001 Defendant contacts the New Mexico Adult Parole & Probation Officer in Farmington (Linda Standerwick), (Exhibit 8) who said that a Motion to Revoke has been done by State of New Mexico Assistant District Attorney (Sandra A Price). September 28, 2001 the State of New Mexico Assistant District Attorney files a Motion to Revoke Probation. October 5, 01 Defendant has District Court fax her copy of Charges (Exhibit 10), which have never been pre ented by anyone.

Defendant is required to pay $30.00 in Fees in Arizona; Petitioner purchased $1.00 per month in Money Orders for

restitution. Arizona did not accept Restitution (Exhibit 7). October 1, 2001 Defendant is summoned to Appear (Exhibit 9) In District Court on October 15, 01. October 9, 2001 Defendant files Response to Motion to Revoke (Exhibit 11). October 9, 2001 Defendant files Motion to Compel New Mexico Department of Corrections to Forward Victim Restitution (Exhibit 12). October 9, 2001 Defendant files Motion to Compel District Attorney & San Juan County Adult Parole & Probation Office to Assist Arizona Department of Parole in Clarification of Restitution (Exhibit 13). October 15, 2001 Defendant filed Motion to Dismiss Lis Pendens Filed by Joe & Toni Wilkins (Exhibit 14). October 15, 2001 Defendant Files Motion to Compel District Attorney & San Juan County Adult Parole & Probation to Release Information in Defendant's File in Above entitled Action on (Exhibit 15). October 15, 2001 Hearing Held in District Court (Exhibit 42) Charges were not read on arraignment nor were they read to Petitioner. *MORRISSEY v.*

BREWER, 408 U.S. 471 *(1972)*; GAGNON *v.* SCARPELLI, *411 U.S. 778* (1973).

MORRISSEY v. BREWER, 408 U.S. 471 *(1972)*

> "At the revocation hearing, which must be conducted reasonably soon after the parolee's arrest, minimum due process requirements are: (a) written notice of the claimed violations of parole; (b) disclosure the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a "neutral and detached" hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the fact finders as to the evidence relied on and reasons for revoking parole."

The Petitioner did not receive any of the aforementioned documents. Petitioner filed Motion to Compel Disclosure (Exhibit 24) on November 09, 2001. Petitioner has not received disclosure, nor has Counsel.

(Exhibit 45) May 3, 02, Page 5, line 4

Mr. Whitehead: Yes. The only records I've been provided have been from Wells Fargo.

October 29, 2001 Letter Sent to Farmington San Juan County New Mexico Adult Parole & Probation (Exhibit 16) requesting what is to be paid on restitution. October 30, 2001 Letter sent to Celeste Casias, New Mexico Interstate Compact/ Department of Corrections/Adult Parole, & Probation (Exhibit 17) November 5, 2001 Letter to New Mexico Interstate Compact/ Department of Corrections/Adult Parole & Probation requesting assistance since New Mexico Parole & Probation has not done anything. (Exhibit 19). November 6, 2001 received fax from New Mexico Interstate Compact/ Department of Corrections/Adult Parole & Probation with Order of Probation and Promissory Note

(Exhibit 20). Documents received by Petitioner (Exhibit 19& 20) are incorrect, however Petitioner was informed to sign them, and they would be corrected. Restitution was not determined as to what the Petitioner could afford to pay, and of course the Promissory Note is turning a criminal conviction into a civil Judgment. U.S. v. DIAMOND, *969 F.2d 961* (10th Cir. 1992) November 6, 2001 Fax Sent to New Mexico Interstate Compact/ Department of Corrections/Adult Parole & Probation with Order of Probation & Promissory Note (Exhibit 21). November 13, 2001 Hearing Held in District Court (Exhibit 43) Petitioner filed numerous motions.

Exhibit 43, Page 3, Line 6

> "they can do anything at all that they want to do, and some of these motions are not going to go anywhere, ma'am, but we need to get you an attorney in order for you to have adequate representation. …."

Exhibit 43, Page 6, Line 20

> Ms. Smith: "And if they declare I that I'm not eligible where do we go from there, Your Honor?"

The Court: "You'll have to hire yourself and attorney or you'll be pro se, representing yourself.

Ms. Smith: "Okay. You will allow me to go pro se, Your Honor?"

The Court: "Reluctantly I'll have no choice, Ma'am."

Ms. Smith: "Can you Order me an attorney at that point if they determine I'm not?"

The Court: "No. I can't order you an attorney. If you are not financially qualified to have a Public Defender appointed, then you will either hire an attorney with your own money or you will be here on your own. Okay?"

STATE v. RAMIREZ, 89 N.M. 635 *(1976)* 556 P.2d 43

The Sixth Amendment to the United States Constitution provides that "In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense." "This is one of the safeguards of the Sixth Amendment

deemed necessary to insure fundamental human rights of life and liberty." *Johnson v. Zerbst,* supra [304 U.S. at 462, 58 S.Ct.at 1022, 82 L.Ed. at 1465].

Under the U S Constitution it guarantees Counsel to be appointed if you cannot afford one. Petitioner field motion (Exhibit 23) for Court to appoint counsel. When Judge Birdsall denied there was no consideration of finances that the Petitioner did or did not have. Petitioner could not afford counsel, so money was borrowed to obtain services of Alan Whitehead. Placing Petitioner in harms way and violation of due process. The Court has provided counsel for other parties charged in a revocation hearing. During the hearing of November 13, 01 (Exhibit 43) it is brought to the Court's attention that Assistant District Attorney has done and illegal search and seizure of Petitioners Bank records, that not Subpoena was served on Petitioner or her Husband. The Petitioner's Husband is Account Holder, with Petitioner as authorized signer (Exhibit 37) Motion filed (Exhibit 25) informing the 11th Judicial District Court that the State

Assistant District Attorney Sandra A Price has done illegal search and seizures on Petitioners personal records prior. It also brought to the attention of 11th Judicial District Court, Judge William Birdsall, that Sandra A Price with held evidence in the Criminal hearing (Exhibit 26) and that the rules of discovery 5-501 where not complied with. The Petitioner is not aware of this until after going to Prison. The Petitioner received the record proper while in Prison. Exhibit 25 shows the Illegal Search & Seizure of telephone records in February-June 1999. In the hearing of November 13, 01, Judge William Birdsall is informed of the illegal search and seizure of bank records.

Exhibit 43, Page 5, Line 15-25

> Ms. Smith: "there has been a subpoena served illegally. It's an illegal search and seizure. I have made a motion. I would like a ruling that those documents be turned back to us and that they not be allowed. The District Attorney did this will intent and we were never notified.

The Court: " what are you talking about, ma'am?"

Ms. Smith: " The Assistant District Attorney, if you look in my paperwork that was filed this morning, if you Honor has it. If not I do have a copy. It's a motion to Quash Subpoena Duces Tecum, and forgive me if I say it incorrectly because I'm not an attorney.

Exhibit 43, Page 6, Line 1-4

The Court: " that's why I want to get you one, so that the attorney can help you make sense of this, ma'am"
Ms Smith: "Yes, Your Honor."

Exhibit 43, Page 7, Line 21-25

Ms. Smith: " I'm sorry to interrupt, but there is one thing, and I do need this on the record. Any communication that is to be given shall be given in the form prescribed by rules of law. The District Attorney has not applied or given me any documents except one, and it

Exhibit 43, Page 8, Line 1-

Was faxed to me, which indicates they do have my fax number. I think we need to play on a level ground likes the law says we're supposed to."

The Court: "That's right. You both need to serve each other with anything that you file with the Court."

Ms. Smith: "And the Chief District Attorney has not done that thus far."

Ms. Price: "Your Honor, I did not have her address until I got the letter from –"

The Court: " Okay, Okay, Okay"

Ms. Smith: " Your Honor-"

The Court: "we know that we're got the address now"

Ms. Price: "I have the fax number. Right."

Ms. Smith: " Your Honor, I beg to differ. She received a fax prior to my motion. She has had it from day one. She has just lied to the Court and I want it in the court record. This is not going in the way it is supposed to. She had the fax number and address since she filed the revocation. She got the it from my parole officer, Your Honor She just lied to you."

> The Court: Okay, Well, we'll deal with that at some other date. Maybe on the 26th when we see if you've got a lawyer."

Judge William Birdsall is apprised on November 13, 2001 of the perjury of Sandra A Price as well as the Illegal Search and Seizure of Bank Records, on October 30, 2001. The Petitioner requests documents from Court (Exhibit 22) since the State does not comply with Judges order of November 13,01 and State Statue. The State filed amended proposed Amend Judgment & Sentence (Exhibit 27). The Subpoena was that the State served to Wells Fargo Bank was not served Petitioner or her husband a Motion was filed to Quash Subpoena Duces Tecum (Exhibit 25).

May 3, 02, Page 4, line 16

> Mr. Whitehead: Court's attention, since Ms. Price gave me a stack of bank records that she, apparently, plans to introduce under the motion to quash, and I have a subpoena for those records because they were obtained in violation of New Mexico statue."

May 3, 02, Page 5, line 4 (Exhibit 45)

Mr. Whitehead: Yes. The only records I've been provided have been from Wells Fargo.

On July 10, 02 a hearing is held in regards to obtaining the Bank records which were previously obtained by The State as a result of an illegal search and seizure. STATE v. McCALL, *101 N.M. 616* (App. 1983), *686 P.2d 958,* IN RE SHON DANIEL K., 1998-NMCA-069, *125 N.M 219 959 P.2d 553* WONG SUN *v.* UNITED STATES, *371 U.S. 471* (1963) STATE v. EVERITT, *80 N.M. 41* (App. 1969) *450 P.2d 927.* A second Subpoena is served upon the Petitioner and her husband. The second Motion to Quash if filed for Petitioner by Mr. Whitehead and Mr. Smith files his Pro Se. (Exhibit 33 & 34) The Bank is served the Subpoena, the bank notifies the Petitioner and Mr. Smith, a copy of the Motion to Quash Subpoena Duces Tecum is sent to the Bank. The Judge Orders the motion denied, however, Mr. Smith is never notified. The Court even admits its mistake (Exhibit 37) The Bank account in question is Mr. Smith's, State Statue has been violated as well as another illegal search and seizure and

violation of due process, fundamental rights. Mr. Smith has filed a motion to compel due process (Exhibit 35) and another motion to quash illegal search and seizure (Exhibit 36).

The 11th Judicial District Court, & The State Assistant District Attorney knows that this is not due process. The Transcript of February 08, 2002 Exhibit 44 even addresses that this is not procedure, as well as their experience.

The Petitioner has tried repeatedly to obtain information and proper papers from Interstate Compact/New Mexico Department of Corrections/ New Mexico Adult Parole & Probation. (Exhibits 30,31,32) Arizona even verifies that they have not seen an amended Judgment or Sentence except f: Petitioner (Exhibit 38), nor has Interstate Compact (Exhibit 40). The Petitioner has requested the New Mexico Adult Parole & Probation provide the Policy & Procedure Manual, pursuant to the public records, however, that has not been provided either, nor any response.

CONCLUSION

The Real Life Dictionary of the Law by Gerald and Kathleen Hill, Publisher General Publishing Group defines

Due Process of Law:

> A fundamental principle of fairness in all legal matters, both civil and criminal, especially in the courts. All legal procedures set by statute and court practice, including notice of rights, must be followed for each individual so that no prejudicial or unequal treatment will result. While somewhat indefinite, the term can be gauged by its aim to safeguard both private and public rights against unfairness. The universal guarantee of due process is in the Fifth Amendment to the U.S. Constitution, which provides "No person shall…be deprived of life, liberty, or property, without due process of law," and is applied to all states by the 14th Amendment. From this basic principle flows many legal decisions determining both procedural and substantive rights.

Search and seizure

n. Examination of a person's premises (residence, business or vehicle) by law enforcement officers looking for evidence of the commission of a crime, and the taking (seizure and removal) of articles of evidence (such as controlled narcotics, a pistol, counterfeit bills, a blood-soaked blanket). The basic question is whether the search and seizure were "unreasonable" under the 4th Amendment to the Constitution (applied to the states under the 14th Amendment), which provides: "The right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." Thus, searches and seizures must be under the authority of a search warrant or when the officer has solid facts that give him/her "probable cause" to believe there was evidence of a specific crime on the premises but no time to get a warrant.

> Evidence obtained in violation of the Constitution is not admissible in court, nor is evidence traced through such illegal evidence.

The 11th Judicial District Court has allowed Illegal Search and Seizure our Bank Accounts, (2) two counts, Illegal search and seizure of telephone records (3) three counts, full disclosure was not done pursuant to N.M.S.A. 5-501, especially when the States chief witness (Gilbert Lopez) had given a written report and testified at the Grand Jury using said report, and Petitioner was not allowed to have witness testify or depose him. The Petition verifies numerous counts of Due Process Violations a Fundamental Right STATE v. RAMIREZ, *89 N.M. 635* (1976) *556 P.2d 43* from the 11th Judicial District Court as well as the State of New Mexico, which have harmed the Petitioner and her Husband Richard Smith. The Petitioner verifies the Motion to Revoke Probation was filed in violation of Due Process as well as being subjected to an Illegal Sentence. The Court denying

Legal Representation, actions prior to trial along with current acts have placed Petitioner in irreparable harm, extraordinary hardship, costly delays, or unusual burdens of expense have resulted. Petitioner asserted her rights to a Speedy Trial, which the record reflects.

One item that has not been addressed is the Exhibit 41, which is the Complaint, Filed with the State Disciplinary Board against Sandra A Price. Upon the review of the complaint the Court will note that The Supreme Court granted an extension of time to try petitioner based upon the Petition filed by Sandra A Price, Assistant District Attorney. Price committed Deceit upon the Supreme Court when she informed the Court of the Facts why the extension was needed.

Exhibit 41 In the Supreme Court of the State of New Mexico - PETITION FOR EXTENSION OF TIME IN WHICH TO TRY DEFENDANT:

> (5) "This matter was set for trial and continued because the defense has been unable to interview an expert witness listed by the State. The Defendant had

plans for vacation out of the Country and a trial setting in another Court. The earliest trial setting available is August 24, thru August 27, 1999, outside the extension granted through August 16, 1999.

Exhibit 41 July 1, 99 Court Transcript Pages 1-57 Verify that Charges were added to the Case from a Grand Jury Indictment which was dismissed in Case 98-899-6. The Transcript also verifies that Petitioners Attorney would be out of the Country after times ran, and had a Court setting after time ran. (Page 37 Line 12- Page 40 Line 25) The transcript also verifies that the reason that the Petitioner's Attorney could not interview the witness for the State since the State did not give the Petitioner and her Attorney the Evidence. (Page 27; Line 10-Page 36 Line 25) In Fact when the Attorney went by to see the evidence the State informed him he could not see the evidence (Page 32 Line 12-Page 33 Line 8)

N.M.S.A. 36-2-10: [Duties of attorneys.] D.

"to employ for the purpose of maintaining causes confided to him such means only as are consistent with truth, and never to seek to mislead the judges by any artifice or false statement of fact or law;"

MATTER OF RICHARDS, *123 N.M. 579* (1997) *943 P.2d 1032*

"In a previous disciplinary matter, a lawyer was publicly censured for knowingly making false statements of material fact to a tribunal. *In re Chakeres*, 101 N.M. 684, 687 P.2d 741 (1984). In a brief filed in the Court of Appeals, Chakeres stated that the testimony concerning a particular issue was uncontroverted. In fact, as Chakeres admitted to the hearing committee, the testimony on that issue was inconsistent and his statement was inaccurate. Although respondent, like Chakeres, is receiving a public censure, there is a significant difference between the two cases. Chakeres admitted his wrongdoing; respondent has not."

MATTER OF McCULLOCH, *103 N.M. 542* (1985) *710 P.2d*

> "When he acts to subvert the very system he has pledged to serve, it is obvious that he should no longer be allowed to practice law. This would be true even absent a criminal conviction."

MATTER OF DUFFY, *102 N.M. 524* (1985) *697 P.2d 943*

> "[W]henever an attorney is found to have engaged in intentional conduct involving dishonesty * * * there is a strong indication that a person is unfit for membership in the Bar of this State. A lawyer's license to practice is a representation that the holder is one who can be trusted to act with honesty and integrity."

MATTER OF LINDSAY, *112 N.M. 17* (1991) *810 P.2d 1237*

> "Ordinarily when an attorney licensed by this Court engages in intentional misconduct involving dishonesty, he or she has been disbarred. *See, e.g., In re Hartley,* 107 N.M. 376, 758 P.2d 790(1988); *In re McCulloch,* 103 N.M. 542, 710 P.2d 736 (1985); *In re Ayala,* 102 N.M. 214, 693 P.2d 580 (1984); *In re Ortega,* 101 N.M.719, 688 P.2d 329 (1984). In addition to providing a strong deterrent to similar misconduct by other attorneys in this state, greater discipline than that previously recommended in this case will promote more uniform standards for the imposition of sanctions."

STATE v. LUCERO, 1999-NMCA-102, *127 N.M. 672, 986 P.2d 468*

"The Supreme Court said that while there may not always be an intent to provoke a mistrial, the prosecutor's misconduct may be so egregious that double jeopardy protections must attach…The first question is whether the prosecutor's conduct was so unfairly prejudicial to the defendant that it could not be cured by means short of a mistrial or a motion for a new trial. Breit, 1996-NMSC-067, ¶ 32. We cannot say that in this case the prosecutor's failure to disclose the existence of a second statement was so unfairly prejudicial to Defendants that it could not be cured by means short of a mistrial or a motion for a new trial. The second statement revealed the name of another witness, Medrano, who allegedly purchased clothing from Allison. Defendants assert that this was inconsistent with Allison's earlier statement that the only person he gave merchandise to was Lucero"

Therefore the Petitioner asserts the Due Process and Double

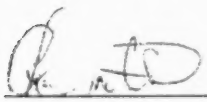
Jeopardy, Fundamental Fairness that the Actions of the State District Attorney were so unfairly prejudicial, since they withheld their own witness report, committed deceit upon the Supreme Court, and Illegal Search and Seizures that the end result was not a fair trial, as well as the current action brought about by the State District Attorneys misconduct.

SPECIFIC RELIEF REQUESTED

Petitioner requests that an Immediate Stay be issued in the Proceedings in the 11th Judicial District Court, until the Supreme Court has a chance to review the petition. The Appellate Court of New Mexico issued a dismissal of a charge, which has been placed upon Petitioner in an Order of Probation. The 11th Judicial District Court knew the Order of Probation was incorrect since it was brought to the Courts attention two days prior to Order of Probation being signed. Petitioner requests Writ of Mandamus issued to the Respondent Judge William Birdsall of the 11th Judicial District Court of New Mexico dismissing the case and all

pending action, since Due Process, Illegal Search & Seizure, and Double Jeopardy are Fundamental rights guaranteed under The United States Constitution of the United States of America. That the New Mexico Department of Corrections/ New Mexico Adult Parole & Probation/ New Mexico Interstate Compact follow the Laws, Rules, & Regulations filed therein.

Respectfully submitted,



Cheri Smith

IN THE SUPREME COURT OF THE STATE 0F NEW MEXICO

CHERI SMITH

Petitioner, Pro Se S. Ct. No._27,751

V

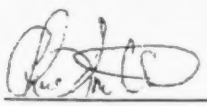
HONORABLE WILLIAM A. BIRDSALL
STATE OF NEW MEXICO
NEW MEXICO INTERSTATE COMPACT A&
NEW MEXICO ADULT PAROLE & PROBATION

Respondents CR98-935-1
District Court No.

- VERIFICATION

STATE OF ARIZONA }
COUNTY OF MARICOPA }ss:

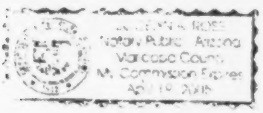
I, CHERI SMITH, being first duly sworn upon my oath, depose and State that I am the Petitioner, pro se; that I have read the foregoing Petition for Writ of Mandamus and Request for Immediate Stay; that I know and understand the contents therein alleged and that they are true to the best of my knowledge and belief.



Cheri Smith

Subscribed and sworn to before me this 22nd day of

Oct, 2002



Notary Public

My Commission Expires: 4/19/05

CERTIFICATE OF SERVICE

I hereby certify that I mailed a true copy of the foregoing

Petition for Writ of Mandamus and Request for Immediate

Stay to:

1. 11th Judicial Distr Crt Cert 7002-0460-0000-2341-0331
   103 S Oliver Drive
   Aztec, NM 87410

2. San Juan County DA Cert 7002-0460-0000-2341-0348
   Greg Tucker
   710 E 20th St.
   Farmington, NM 87402

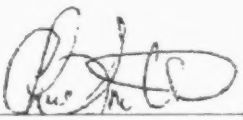
3. Alan Whitehead Certified 7002-0460-0000-2341-0324
   4004 East 30th St.
   Farmington, NM 87402

4. NM Atty. General Off Cert 7002-0460-0000-2341-0317
   P O Box 1508
   Santa Fe, NM 87504-1508

5. Celeste Casias Certified 7002-0460-0000-2341-030[illegible]
   New Mexico Interstate Compact &
   New Mexico Adult Parole & Probation
   New Mexico Dept of Corrections
   P O Box 27116
   Santa Fe, NM 87502

The foregoing items were mailed by U.S. Mail, Certified

Return Receipt, on October 22, 2002

By 

Cheri Smith, Petitioner, Pro Se

31-5-20 Interstate Compact for Adult Offender Supervision.]

Effective June 19, 2002, passage of 35 States.

The Interstate Compact for Adult Offender Supervision is enacted into law and entered into on behalf of New Mexico with any and all other states legally joining therein in a form substantially as follows:

INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION

ARTICLE I — Purpose

A. The compacting states to this interstate compact recognize that each state is responsible for the supervision of adult offenders in the community and is authorized pursuant to the bylaws and rules of this compact to travel across state

lines both to and from each compacting state in such a manner as to track the location of offenders, transfer supervision authority in an orderly and efficient manner and, when necessary, return offenders to the originating jurisdictions. The compacting states also recognize that congress, by enacting the Crime Control Act, 4 U.S.C. § 112, 1965, has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

B. It is the purpose of this compact and the interstate commission created hereunder, through means of joint and cooperative action among the compacting states:

(1) to provide the framework for the promotion of public safety and protection of the rights of victims in the community through the control and regulation of the interstate movement of offenders;

(2) to provide for the effective tracking, supervision and rehabilitation of these offenders by the sending and receiving

states; and

(3) to equitably distribute the costs, benefits and obligations of the compact among the compacting states.

C. In addition, this compact will:

(1) create an interstate commission that will establish uniform procedures to manage the movement between states of adults placed under community supervision and released to the community under the jurisdiction of courts, paroling authorities, corrections or other criminal justice agencies and that will promulgate rules to achieve the purpose of this compact;

(2) ensure an opportunity for input and timely notice to victims and to jurisdictions as to where defined offenders are authorized to travel or to relocate across state lines;

(3) establish a system of uniform data collection, access to information on active cases by authorized criminal justice officials and regular reporting of compact activities to heads of state councils, state executive, judicial and legislative

branches and criminal justice administrators;

(4) monitor compliance with rules governing interstate movement of offenders and initiate interventions to address and correct noncompliance; and

(5) coordinate training and education regarding regulations of interstate movement of offenders for officials involved in such activity.

D. The compacting states recognize that there is no "right" of any offender to live in another state and that duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any offender under supervision subject to the provisions of this compact and bylaws and rules promulgated hereunder.

E. It is the policy of the compacting states that the activities conducted by the interstate commission created herein are the formation of public policies and are therefore public business.

ARTICLE II — Definitions

As used in this compact, unless the context clearly requires a different construction:

A. "adult" means both individuals legally classified as adults and juveniles treated as adults by court order, statute or operation of law;

B. "bylaws" mean those bylaws established by the interstate commission for its governance or for directing or controlling the interstate commission's actions or conduct;

C. "compact" means the Interstate Compact for Adult Offender Supervision;

D. "compact administrator" means the individual in each compacting state appointed pursuant to the terms of this compact responsible for the administration and management of the state's supervision and transfer of offenders subject to the terms of this compact, the rules adopted by the interstate commission and policies adopted by the state council under this compact;

E. "compacting state" means any state that has enacted the

enabling legislation for this compact;

F. "commit loner" means the voting representative of each compacting state appointed pursuant to Article III of this compact;

G. "interstate commission" means the interstate commission for adult offender supervision established by this compact;

H. "member" means the commissioner of a compacting state or his designee, who shall be a person officially connected with the commissioner;

I. "non-compacting state" means any state that h t enacted the enabling legislation for this compact;

J. "offender" means an adult placed under or subject to supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, corrections or other criminal justice agencies;

K. "person means any individual, corporation, business

enterprise or other legal entity, either public or private;

L. "rules" jeans acts of the interstate commission, duly promulgated pursuant to Article VIII of this compact, substantially affecting interested parties in addition to the interstate commission, which shall have the force and effect of law in the compacting states;

M. "state" means a state of the United States, the District of Columbia and any other territorial possessions of the United States; and

N. "state council" means the resident members of the state council for interstate adult offender supervision created by each compacting state under Article IV of this compact.

ARTICLE III — The Compact Commission

A. The compacting states hereby create the "interstate commission for adult offender supervision". The interstate commission shall be a body corporate and joint agency of the compacting state The interstate commission shall have all the responsibilities, powers and duties set forth herein, including

the power to sue and be sued and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact. The interstate commission shall consist of commissioners selected and appointed by resident members of a state council for interstate adult offender supervision for each state. In addition to the commissioners who are the voting representatives of each state, the interstate commission shall include individuals who are not commissioners but who are members of interested organizations; such non-commissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general and crime victims. All non-commissioner members of the interstate commission shall be ex-officio, nonvoting members. The interstate commission may provide in its bylaws for such additional, ex-officio, nonvoting members as it deems necessary.

B. Each compacting state represented at any meeting of the interstate commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the interstate commission. The interstate commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of twenty-seven or more compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

C. The interstate commission shall establish an executive committee that shall include commission officers, members and others as shall be determined by the bylaws. The executive committee shall have the power to act on behalf of the interstate commission during periods when the interstate commission is not in session, with the exception of rulemaking and amendment to the compact. The executive committee shall oversee the day-to-day activities managed by

the executive director and interstate commission staff, administer enforcement and co pliance with the provisions of the compact and its bylaws as directed by the interstate commission and perform other duties as directed by the interstate commission or set forth in the bylaws.

ARTICLE IV — The State Council

Each compacting state shall create a "state council for interstate adult offender supervision" that shall be responsible for the appointment of the commissioner who shall serve on the interstate commission from that state. Each state council shall appoint as its commissioner the compact administrator from that state to serve on the interstate commission in such capacity under or pursuant to applicable law of the compacting state. While each compacting state may determine the membership of its own state council, its membership must include at least one representative from the legislat e, judicial and executive branches of government and victims groups and its compact administrator Each

compacting state retains the right to determine the qualifications of the compact administrator who shall be appointed by the state council or by the governor in consultation with the legislature and the judiciary. In addition to appointment of its commissioner to the interstate commission, each state council shall exercise oversight and advocacy concerning its participation in interstate commission activities and other duties as may be determined by each compacting state, including development of policy concerning operations and procedures of the compact within that state.

ARTICLE V — Powers and Duties of the Interstate Commission

The interstate commission shall have the following powers:

A. to adopt a seal and suitable bylaws governing the management and operation of the interstate commission;

B. to promulgate rules that shall have the force and effect of statutory law and shall be binding in the compacting states

to the extent and in the manner provided in this compact;

C. to oversee, supervise and coordinate the interstate movement of offenders subject to the terms of this compact and any bylaws adopted and rules promulgated by the interstate commission;

D. to enforce compliance with compact provisions and interstate commission rules and bylaws, using all necessary and proper means, including the use of judicial process;

E. to establish and maintain offices;

F. to purchase and maintain insurance and bonds;

G. to borrow, accept or contract for services of personnel, including members and their staffs;

H. to establish and appoint committees and hire staff that it deems necessary for the carrying out of its functions, including an executive committee as required by Article III that shall have the power to act on behalf of the interstate commission in carrying out its powers and duties hereunder;

I. to elect or appoint such officers, attorneys, employees,

agents or consultants and to fix their compensation, define their duties and determine their qualifications; and to establish the interstate commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation and qualifications of personnel;

J. to accept any and all donations and grants of money, equipment, supplies, materials and services and to receive, utilize and dispose of same;

K. to lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal or mixed;

L. to sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property, real, personal or mixed;

M. to establish a budget and make expenditures and levy dues as provided in Article X of this compact;

N. to sue and be sued;

O. to provide for dispute resolution among compacting states;

P. to perform such functions as may be necessary or appropriate to achieve the purposes of this compact;

Q. to report annually to the legislatures, governors, judiciary and state councils of the compacting states concerning the activities of the interstate commission during the preceding year. The reports shall also include any recommendations that may have been adopted by the interstate commission;

R. to coordinat. education, training and public awareness regarding the interstate movement of offenders for officials involved in such activity; and

S. to establish uniform standards for the reporting, collecting and exchanging of data.

ARTICLE VI — Organization and Operation of the Interstate Commission

A. The interstate commission shall, by a majority of the

members, within twelve months of the first interstate commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including:

(1) establishing the fiscal year of the interstate commission;

(2) establishing an executive committee and such other committees as may be necessary;

(3) providing reasonable standards and procedures:

(a) for he establishment of committees; and

(b) for any general or specific delegation of any authority or function of the interstate commission;

(4) providing reasonable procedures for calling and conducting meetings of the interstate commission and ensuring reasonable notice of each such meeting;

(5) establishing the titles and responsibilities of the officers of the interstate commission;

(6) providing reasonable standards and procedures for the

establishment of the personnel policies and programs of the interstate commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws shall exclusively govern the personnel policies and programs of the interstate commission;

(7) providing a mechanism for winding-up the operations of the interstate commission and for the equitable return of any surplus funds that may exist upon the termination of the compact after the payment and reserving of all of its debts and obligations;

(8) providing transition rules for "start-up" administration of the compact; and

(9) establishing standards and procedures for compliance and technical assistance in carrying out the compact.

B. The interstate commission shall, by a majority of the members, elect from among its members a chairperson and a vice chairperson, each of whom shall have such authorities and duties as may be specified in the bylaws. The chairperson

or, in his absence or disability, the vice chairperson, shall preside at all meetings of the interstate commission. The officers so elected shall serve without compensation or remuneration from the interstate commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for any actual and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the interstate commission. The interstate commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the interstate commission may deem appropriate. The executive director shall serve as secretary to the interstate commission, and hire and supervise such other staff as may be authorized by the interstate commission, but shall not be a member.

C. The interstate commission shall maintain its corporate books and records in accordance with the bylaws.

D. The members, officers, executive director and employees of the interstate commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of any actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities; provided that nothing in this paragraph shall be construed to protect any such person from suit or liability for any damage, loss, injury or liability caused by the intentional or willful and wanton misconduct . . any such person. The interstate commission shall defend the commissioner of a compacting state, or his representatives or employees or the interstate commission's representatives or employees, in any civil action seeking to impose liability, ari . . g out of any actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities, or that the defendant

had a reasonable basis for believing occurred within the scope of interstate commission employment, duties or responsibilities; provided that the actual or alleged act, error or omission did not result from intentional wrongdoing on the part of such person. The interstate commission shall indemnify and hold the commissioner of a compacting state, the appointed designee or employees or the interstate commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties or responsibilities; provided that the actual or alleged act, error or omission did not result from gross negligence or intentional wrongdoing on the part of such person.

ARTICLE VII — Activities of the Interstate Commission

A. The interstate commission shall meet and take such actions as are consistent with the provisions of this compact.

B. Except as otherwise provided in this compact and unless a greater percentage is required by the bylaws, in order to constitute an act of the interstate c. .mmis such act shall have been taken at a meeting of the interstate commission and shall have received an affirmative vote of a majority of the members present.

C. Each member of the interstate commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the interstate commission. A member shall vote in person on behalf of the compacting state and shall not delegate a vote to another compacting state. However, a state council shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the compacting state at a specified meeting. The bylaws may provide for members' participation in meetings

by telephone or other means of telecommunication or electronic communication. Any voting conducted by telephone, or other means of telecommunication or electronic communication shall be subject to the same quorum requirements of meetings where members are present in person.

D. The interstate commission shall meet at least once during each calendar year The chairperson of the interstate commission may call additional meetings at any time and, upon the request of a majority of the members, shall call additional meetings.

E. The interstate commission's bylaws shall establish conditions id procedures under which the interstate commission shall make its information and official records available to the public for inspection or copying. The interstate commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary

interests. In promulgating such rules, the interstate commission may make available to law enforcement agencies records and information otherwise exempt from disclosure, and may enter into agreements with law enforcement agencies to receive or exchange information or records subject to non-disclosure and confidentiality provisions.

F. Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The interstate commission shall promulgate rules consistent with the principles contained in the federal Government in the Sunshine Act, 5 U.S.C. § 552 (b), as may be amended. The interstate commission and any of its committees may close a meeting to the public where it determines by a two-thirds' vote that a meeting would be likely to:

(1) relate solely to the interstate commission's internal personnel practices and procedures;

(2) disclose matters specifically exempted from

disclosure by statute;

(3) disclose trade secrets or commercial or financial information that is privileged or confidential;

(4) involved accusing any person of a crime, or formally censuring any person;

(5) disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(6) disclose investigatory records compiled for law enforcement purposes;

(7) disclose information contained in or related to examination, operating or condition reports prepared by, or on behalf of or for the use of, the interstate commission with respect to a regulated entity for the purpose of regulation or supervision of such entity;

(8) disclose information, the premature disclosure of which would significantly endanger the life of a person or the stability of a regulated entity; or

(9) specifically relate to the interstate commission's issuance of a subpoena or its participation in a civil action or proceeding.

G. For every meeting closed pursuant to this provision, the interstate commissions chief legal officer shall, publicly certify that, in his opinion, the meeting may be closed to the public, and shall reference each relevant exemptive provision. The interstate commission shall keep minutes that shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons there for, including a description of each of the views expressed on any item and the record of any roll-call vote, reflected in the vote of each member on the question. All documents considered in connection with any action shall be identified in the minutes.

H. The interstate commission shall collect standardized data concerning the interstate movement of offenders as directed through its bylaws and rules, which shall specify the

data to be collected, the means of collection and data exchange and reporting requirements.

ARTICLE VIII — Rulemaking Functions of the Interstate Commission

A. The interstate commission shall promulgate rules in order to effectively and efficiently achieve the purposes of the compact, including transition rules governing administration of the compact during the period in which it is being considered and enacted by the states. Rulemaking shall occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant thereto. Such rulemaking shall substantially conform to the principles of the federal Administrative Procedure Act, 5 U.S.C. § 551 et seq., and the federal Advisory Committee Act, 5 U.S.C. § 1 et seq., as may be amended. All rules and amendments shall become binding as of the date specified in each rule or amendment.

B. If a majority of the legislatures of the compacting states rejects a rule, by enactment of a statute or resolution in the

same manner used to adopt the compact, then such rule shall have no further force and effect in any compacting state.

C. When promulgating a rule, the interstate commission shall:

(1) publish the proposed rule stating with particularity the text of the rule that is proposed and the reason for the proposed rule;

(2) allow persons to submit written data, facts, opinions and arguments, which information shall be publicly available;

(3) provide an opportunity for an informal hearing; and

(4) promulgate a final rule and its effective date, if appropriate, based on the rulemaking record.

D. Not later than sixty days after a rule is promulgated, any interested person may file a petition in the United States district court for the District of Columbia or in the federal district court where the interstate commission's principal office is located for judicial review of such rule. If the court

finds that the interstate commission's action is not supported by substantial evidence, as defined in the Administrative Procedure Act, in the rulemaking record, the court shall hold the rule unlawful and set it aside. Subjects to be addressed within twelve months after the first meeting must at a minimum include:

(1) notice to victims and opportunity to be heard;

(2) offender registration and compliance;

(3) violations or returns;

(4) transfer procedures and forms;

(5) eligibility for transfer;

(6) collection of restitution and fees from offenders;

(7) data collection and reporting;

(8) the level of supervision to be provided by the receiving state;

(9) transition rules governing the operation of the compact and the interstate commission during all or part of the period between the effective date of the compact and the

date on which the last eligible state adopts the compact; and

(10) mediation, arbitration and dispute resolution.

E. The existing rules governing the operation of the previous compact superseded by this compact shall be null and void twelve months after the first meeting of the interstate commission created hereunder.

F. Upon determination by the interstate commission that an emergency exists, it may promulgate an emergency rule that shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, in no event later than ninety days after the effective date of the rule.

ARTICLE IX — Oversight, Enforcement, and Dispute Resolution by the Interstate Commission

A. The interstate commission shall oversee the interstate movement of adult offenders in the compacting states and shall monitor such activities being administered in non-

compacting states that may significantly affect compacting states. The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact that may affect the powers, responsibilities or actions of the interstate commission, the interstate commission shall be entitled to receive all service of process in any such proceeding and shall have standing to intervene in the proceeding for all purposes.

B. The compacting states shall report to the interstate commission on issues or activities of concern to them and cooperate with and support the interstate commission in the discharge of its duties and responsibilities. The interstate commission shall attempt to resolve any disputes or other issues that are subject to the compact and that may arise among compacting states and non-compacting states. The

interstate commission shall enact a bylaw or promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

C. The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions of this compact using any or all means set forth in Section B of Article XII of this compact.

ARTICLE X — Finance

A. The interstate commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.

B. The interstate commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the interstate commission and its staff that must be in a total amount sufficient to cover the interstate commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be

determined by the interstate commission, taking into consideration the population of the compacting state and the volume of interstate movement of offenders in each compacting state and shall promulgate a rule binding upon all compacting states that governs said assessment.

C. The interstate commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the same; nor shall the interstate commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

D. The interstate commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the interstate commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the interstate commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual

report of the interstate commission.

ARTICTLE XI — Compacting States, Effective Date and Amendment

A. Any state is eligible to become a compacting state. The compact shall become effective and binding upon legislative enactment of the compact into law by no less than thirty-five of the states. The initial effective date shall be the later of July 1, 2001, or upon enactment into law by the thirty-fifth state. Thereafter it shall become effective an nding, as to any other compacting state; upon enactment o. the compact into law by that state. The governors of non-compacting states or their designees will be invited to participate in interstate commission activities on a non-voting basis prior to adoption of the compact by all states and territories of the United States.

B. Amendment to the compact may be proposed by the interstate commission for enactment by th compacting states. No amendment shall become effective and binding

upon the interstate commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

ARTICLE XII — Withdrawal, Default, Termination and Judicial Enforcement

A. Once effective, the compact shall continue in force and remain binding upon each and every compacting state; provided that a compacting state may withdraw from the compact by enacting a statute specifically repealing the statute that enacted the compact into law. The effective date of withdrawal is the effective date of the repeal. The withdrawing state shall immediately notify the chairperson of the interstate commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The interstate commission shall notify the other compacting states of the withdrawing state's intent to withdraw within sixty days of its receipt thereof The withdrawing state is

responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal. Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the interstate commission.

B. If the interstate commission determines that any compacting state has at any time defaulted in they performance of any of its obligations or responsibilities under this compact, the bylaws or any duly promulgated rules, the interstate commission may impose any or all of the following penalties:

(1) fines, fees and costs in such amounts as are deemed to be reasonable as fixed by the interstate commission;

(2) remedial training and technical assistance as directed by the interstate commission; and

(3) suspension and termination of membership in the

compact. Suspension shall be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted. Immediate notice of suspension shall be given by the interstate commission to the governor, the chief justice or chief judicial officer of the state, the majority and minority leaders of the defaulting state's legislature and the state council.

The grounds for default include failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, interstate commission bylaws or duly promulgated rules. The interstate commission shall immediately notify the defaulting state in writing of the penalty imposed by the interstate commission on the defaulting state pending a cure of the default. The interstate commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the interstate commission, in addition to any

other penalties imposed herein, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the compacting states, and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of suspension. Within sixty days of the effective date of termination of a defaulting state, the interstate commission shall notify the governor, the chief justice or chief judicial officer and the majority and minority leaders of the defaulting state's legislature and the state council of such termination. The defaulting state is responsible for all assessments, obligations and liabilities incurred through the effective date of termination, including any obligations, the performance of which extends beyond the effective date of termination. The interstate commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon between the interstate commission and the defaulting state. Reinstatement following termination of any compacting state requires both a re-

enactment of the compact by the defaulting state and the approval of the interstate commission pursuant to the rules.

C. The interstate commission may, by majority vote of the members, initiate legal action in the United States district court for the District of Columbia or, at the discretion of the interstate commission, in the federal district where the interstate commission has its offices to enforce compliance with the provisions of the compact and its duly promulgated rules and bylaws against any compacting state in default. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorney fees.

D. The compact dissolves effective upon the date of the withdrawal or default of the compacting state, which reduces membership in the compact to one compacting state. Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the interstate commission shall be

wound-up and any surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XIII — Severability and Construction

A. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

B. The provisions of this compact shall be liberally constructed to effectuate its purposes.

ARTICLE XIV — Binding Effect of Compact and Other Laws

A. Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact. All compacting states' laws conflicting with this compact are superseded to the extent of the conflict.

B. All lawful actions of the interstate commission, including all rules and bylaws promulgated by the interstate commission, are nding upon the compacting states. All

agreements between the interstate commission and the compacting states are binding in accordance with their terms. Upon the request of a party to a conflict over meaning or interpretation of interstate commission actions, and upon a majority vote of the compacting states, the interstate commission may issue advisory opinions regarding such meaning or interpretation. In the event any provision of this compact exceeds the constitutional limits imposed on the Legislature of any compacting state, the obligations, duties, powers or jurisdiction sought to be conferred by such provision upon the interstate commission shall be ineffective and such obligations, duties, powers or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers or jurisdiction are delegated by law in effect at the time this compact becomes effective.

History: Laws 2001 ch. 322, § 1.

31-21-14. Return of parole violator.

A. At any time during release on parole the board or the director may issue a warrant for the arrest of the released prisoner for violation of any of the conditions of release, or issue a notice to appear to answer a charge of violation. The notice shall be served personally upon the prisoner. The warrant shall authorize the superintendent of the institution from which the prisoner was released to return the prisoner to the actual custody of the institution or to any other suitable detention facility designated by the board or the director. If the prisoner is out of the state, the warrant shall authorize the superintendent to return him to the state.

B. The director may arrest the prisoner without a warrant or may deputize any officer with power of arrest to do so by giving him a written statement setting forth that the prisoner has, in the judgment of the director, violated the conditions of his release. Where an arrest is made without a warrant, the prisoner shall not be returned to the institution unless authorized by the director or the board. Pending hearing as provided by law upon any charge of violation, the prisoner shall remain incarcerated in the institution.

C. Upon arrest and detention, the board shall cause the prisoner to be promptly brought before it for a parole revocation hearing on the parole violation charged, under rules and regulations the board may adopt. If violation is established, the board may continue or revoke the parole or

enter any other order as it sees fit.

D. A prisoner for whose return a warrant has been issued shall, if it is found that the warrant cannot be served, be a fugitive from justice. If it appears that he has violated the provisions of his release, the board shall determine whether the time from the date of the violation to the date of his arrest, or any part of it, shall be counted as time served under the sentence.

History: 1953 Comp., § 41-17-28, enacted by Laws 1955, ch. 232, § 17; 1959, ch. 31, § 1; 1963, ch. 301, § 12.

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***31-21-15.* Return of probation violator.**

A. At any during probation:

(1) the court may issue a warrant for the arrest of a probationer for violation of any of the conditions of release. The warrant shall authorize the return of the probationer to the custody of the court or to any suitable detention facility designated by the court;

(2) the court may issue a notice to appear to answer a charge of violation. The notice shall be personally served upon the probationer; or

(3) the director may arrest a probationer without warrant or may deputize any officer with power of arrest to do so by giving him a written statement setting forth that the probationer has, in the judgment of the director, violated the conditions of his release. The written statement, delivered with the probationer by the arresting officer to the official in charge of a county jail or other place of detention, is sufficient warrant for the detention of the probationer. Upon arrest and detention, the director shall immediately notify the court and submit in writing a report showing in what manner the probationer has violated the conditions of release.

B. The court shall then hold a hearing, which may be informal, on the violation charged. If the violation is established, the court may continue the original probation,

revoke the probation and either order a new probation with any condition provided for in Section 31-20-5 or 31-20-6 NMSA 1978, or require the probationer to serve the balance of the sentence imposed or any lesser sentence. If imposition of sentence was deferred, the court may impose any sentence which might originally have been imposed, but credit shall be given for time served on probation.

C. If it is found that a warrant for the return of a probationer cannot be served, the probationer is a fugitive from justice. After hearing upon return, if it appears that he has violated the provisions of his release, the court shall determine whether the time from the date of violation to the date of his arrest, or any part of it, shall be counted as time served on probation.

D. The board shall budget funds to cover expenses of returning probationers to the court. The sheriff of the county in which the probationer was convicted is the court's agent in the transportation of the probationer, but the director, with the consent of the court, may utilize other state agencies for this purpose when it is in the best interest of the state.

History: 1953 Comp., § 41-17-28.1, enacted by Laws 1963, ch.301, § 13; 1989, ch. 139, § 1.

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DATE ISSUED: 08/30/82 **NUMBER: CD-053000**

EFFECTIVE DATE: 08/30/82

REVISED DATE: 08/01/02

SUBJECT: Adult Interstate Compact

I. AUTHORITY:

A. NMSA 1978, Section 31-21-8, as amended. B. NMSA 1978, Section 31-5-1, as amended. C. Policy CD-010100.

II. REFERENCE:

ACA Standards 2-3164 and 2-3165, Manual of Standards for Adult Probation and Parole Field Services, 1981.

III. PURPOSE:

To establish guidelines for the proper transfer of offenders between states and provide for the development and execution of this program.

IV. APPLICABILITY:

All Probation and Parole Division (PPD) staff.

V. DEFINITIONS:

A. C. O.: Probation and Parole Division Central Office.

B. Family: Mother, father, grandmother, grandfather, brother, sister, wife or adult child.

C. Interstate Compact: A compact entered into by and among the contracting states, signatories thereto, with the consent of the Congress of the United States of America, granted by. an act entitled, "An Act Granting the Consent of Congress to Any Two or More States to Enter Into Agreements or Compacts for

Cooperative Effort and Mutual Assistance in the Prevention of Crime and for Other Purposes".

D. Provisional Travel Permits: Travel permits issued in emergency circumstances by a sending state to allow a parolee or probationer to proceed to a receiving state prior to completion of an investigation and formal acceptance of the case

E. Receiving State: The state to which transfer of supervision is being sought

F. Resident of Receiving State: An offender who has been an actual inhabitant of the receiving state continuously for more than one year prior to coming to the sending state and has not resided within the sending state more than six continuous months immediately preceding the commission of the offense for which the conviction occurred.

G. Sending State: The state requesting transfer of supervision.

H. State: A state of the United States, the United States of America, a territory or possession of the United States, or the Commonwealth of Puerto Rico, the Virgin Islands and the District of Columbia.

I. Temporary Travel Permit: A travel permit issued by the receiving state to a parolee or probationer that authorizes him/her to make visits out of the receiving state for a period not to exceed 30 days.

VI. POLICY:

A. The Probation and Parole Division, through the New Mexico Corrections Department and the State of New Mexico, will be a party to the Interstate Compact for Supervision of Parolees and Probationers.

B. Under the provisions of this agreement, members serve as each other's agents in the supervision of parolees and

probationers. In essence, the compact provides a legal method whereby parolees and probationers may move to better rehabilitative environments outside the state without losing the advantages of supervision or escaping from the jurisdiction of the state in which they were sentenced.
The Division will apply equal standards of supervision and services to probationers and parolees transferred under the Compact as applied to New Mexico probationers and parolees.

C. Under current New Mexico law, the Director of the Probation and Parole Division is the Administrator of the Interstate Compact.

D. Although the Director, as Compact Administrator, is responsible for the administration of Interstate Compact for the supervision of parolees and probationers, the Director shall designate a member of the Probation and Parole Division, the Interstate Compact Administrator, whose duty it shall be to ensure that all matters involving adult interstate cases are performed in accordance with established compact procedures and with procedures outlined in PPD 222.1.

E. Acceptance, rejection or termination of interest in cases shall not occur except through the Director or a designee. If an offender requesting a Compact transfer to New Mexico meets the necessary residence and employment qualification, they will be accepted for supervision.

07/31/02
Date

Jim Burleson, Interim Cabinet Secretary
New Mexico Corrections Department

DATE ISSUED: 08/30/82 **NUMBER: CD-053001**

EFFECTIVE DATE: 08/30/82

REVISED DATE: 08/01/02

SUBJECT: Adult Interstate Compact

I. AUTHORITY:

Policy CD-053000.

II. PROCEDURES:

A. Compact Manual:

All district, unit, and region offices shall have a Compact Manual and a Directory of Parole and Probation Compact Administrators. Promptly upon receiving any changes to the manual, the District/Unit and Region Manager will see that the necessary corrections in the publication are posted.

All correspondence regarding Compact matters shall be addressed as per the latest directory, and will be forwarded through the Region Office to the C.O., Probation and Parole Division. It will be the responsibility of the District/Unit Supervisor to ensure that correspondence to receiving states is addressed correctly. In corresponding with other states, include the prime case number and county of origin, if a probationer, e.g. JONES, John, San Diego County, No. 12345; or the name, state and parole number, if a parolee, e.g. JONES, John, CALIFORNIA, No. 12345.

B. General Procedures:

1. The original and two copies of all correspondence and documents shall be prepared for the receiving state. Copies shall be included for Central Office, as required, and one shall be maintained in the District Office.

2. In the case of a New Mexico probationer to be transferred to, or who is already residing in another state, correspondence should not be conducted directly with the local Probation Officer who is supervising the case. Rather, correspondence will be maintained only with the Compact Administrator of the state through the Interstate Compact Administrator (ICA). When a Probation Parole Officer from another state writes directly to one of our district offices, a copy should be routed to Central Office, Probation and Parole Division, through the Region Office. The ICA will inform the other state's probation office to channel their correspondence through their compact administrator.

3. Cooperative Case Reports, Form PPD-23 (Attachment A) Cooperative Case Reports to other states other than initial, will follow an outline of four paragraphs headed as follows:

a. Residence
b. Employment/Income
c. Personal and Family
d. Summary and Comments

C. Compact Reports: There are three types of cooperative

case reports.

1. Initial (or Arrival) Report:

The initial report will be the first made after the offender reports to the District Office, or the Probation and Parole Officer makes contact with him/her. Frequently, a report of investigation is made by the Probation and Parole Officer to the sending state utilizing a Reply to Investigation Request Form, PPD-8 (Attachment B) in which it is indicated that the parolee or probationer is already on the scene, and provides basic information on the case. This will suffice as an initial report. Forms PPD-23 and PPD-8 may be used as the individual need indicates. The arrival report will be sent to the sending state

within 30 days of the client's arrival in New Mexico.

2. Special Report: A Special Report will be made for the following purposes:

a. Reporting violations committed by the parolee or probationer. All such violations will be promptly reported to the sending state.

b. Reporting final results of any violation proceedings brought against a parolee or probationer.

c. Requests to the sending state for special permission where the Compact Manual indicates the sending state desires such.

3. Annual Report:

Annual reports will be made on the Cooperative Case Report Form, PPD-23 (Attachment A) and will be used for reports rather than formal letters to the sending state. Cooperative Case Reports will be submitted annually by the District Office unless frequent reporting is requested. The report will consistently indicate the date when parole or probation expires. This will serve as an alert to the receiving state, plus an alert to the District Supervisor, and will help the Division's evaluation of the case. Where the sending state has a system of minimum and maximum release, both dates should be entered. Reports should be brief, and yet given a good summary of the situation to date. If at all possibl limit a report to the space provided on the lower half of the form.

D. Procedural Reports:

1. Reply to Investigation Request:

a. The Reply to Investigation Request, PPD-8, must be completed in an accurate and comprehensive manner by the investigating Probation and Parole Officer. While the actual investigation methods are outlined in PPD-22, the information

gathered must be properly documented on PPD-8. This information should include a summary and assessment of residence, family employment, income and any other factors. ICA will review the recommendation and make a determination. ICA will depart from the recommendation if the Interstate Compact criteria for acceptance was not followed.

b. In some cases, a request for investigation is received and the parolee or probationer to be investigated is already in the community. In that case, a statement to that effect will be made in the "Summary of Residence" portion of the report. An "X" will be placed in the item stating that the person is already here. This one item has special importance as it informs the sending state that our next report will be an annual. Also, indicate if Emergency Reporting instructions were received. If not, indicate client is in New Mexico in violation of Interstate Compact Rules and Regulations.

The investigation of the Compact request will use the same general criteria for evaluation of residence and employment that is used for a Parole Plan Investigation. If the offender requesting transfer is a resident of New Mexico or has family residing in New Mexico and can obtain employment in New Mexico, then the request for transfer should be approved. If the offender is not a resident of New Mexico and does not have family here, and/or cannot obtain employment here, then the request may be considered, but in general should not be approved without special circumstances making it in the best interest of the public of New Mexico.

c. The form will be addressed to the sending state Compact Administrator or designated representative. Supervisor of Interstate Services will send a copy of the reply with a cover letter, if necessary, indicating approval and/or further explanation of the rejection. If the transferring offender is a Sex Offender as defined in NM Sex Offender Registration Act of 1995, notification of the duty to register is to be included in the reply.

d. When Form PPD-8 (Reply to Investigation Request) indicates acceptance of the case and the person in question is not in the community, the Division's file on that prospective transferee will be of help pending information regarding arrival. On form PPD-8, include reporting instructions, Probation and Parole Officer's name, address, and phone number and whether the offender is to report in person or by phone. The case should be opened if the Probation and Parole Officer "agreed" to take the case. A copy of the acceptance/rejection will only be sent of the Compact Administrator changes the Probation and Parole Officer's original decision.

e. When Form PPD-8 (Reply to Investigation Request) indicates a rejection of the case, complete this report thoroughly.

f. If, during the process of completing an investigation for out-of-state placement, the individual moves to another district and her/his whereabouts are known. The investigations officer shall forward the case material to the new district and a Form PPD-8 to the sending state through the Compact advising the sending state as to the particulars of the case.

2. Compact Case Failing to Report:

a. In the event that the sending state notifies the Division when to expect the transferee, and he/she does not arrive within 30 days of the expected reporting date, inquiry shall be sent to the sending state on Form PPD16.

b. In the event the division informs the sending state that we accept a case and the sending state does not respond within 30 days or the subject has not yet arrived, Form PPD-16 should be used to inquire of the sending state whether we should continue to expect the subject.

c. The sending state at this time is informed that we officially are opening the case as of the date of the reporting.

Reports are to be prepared in an original and copies, as

necessary. Reports may be sent directly to the Interstate Compact Office.

3. Courtesy Supervision:

There are times when probationers or parolees have come from other states to New Mexico without being cleared through the Interstate Compact. This is particularly true of probationers or parolees here on (1) travel permits or (2) as absconders. When a supervisor has personal contact with such an offender and renders some services in this case, that case becomes one of "Courtesy Supervision." It remains in that status until formal disposition of the case is made, such as New Mexico accepts supervision of the case under the compact, or no supervision is desired by the original (sending) state, or the offender leaves the state, etc. Examples of services that may be rendered which justify placing the case in "Courtesy Supervision" are listed below. Whenever correspondence is necessary for the sending state to explain an offender's situation as per a. and b. immediately below, the following procedure should be utilized:

a. Ask client for his/her name, DOB, SSN, County of conviction, State of conviction, Probation or Parole Officer's name, crime, local phone number and address.

b. Call Interstate Compact to inform them of the client.

c. Interstate Compact will then contact the sending state.

d. Interstate Compact will then notify the Probation and Parole Officer of the outcome.

PPD Arrest and Hold Orders can be issued under courtesy supervision. The Probation and Parole Officer should immediately advise the sending state of any violations or criminal problems encountered by the offender.

Until final disposition is made, the case will NOT be carried on the Monthly Report.

With any Compact case, the duration of the parole/probation period shall be determined by the sending state. The degree of supervision shall be determined by the receiving state.

E. Transfer of New Mexico Offenders to Other States:

When it is desired to transfer a New Mexico adult parolee or probationer to another state, the procedure will be as follows:

1. The request is to be made on an Investigation Request Form PPD-38 (Attachment D). The form is to be completed in duplicate plus one copy for the Central Office, Probation and Parole Division, one for the Region Office, as required, and one for the District Office. The receiving state should, whenever possible, be given the opportunity to investigate the prospective plan of the individual prior to the individual being sent to the receiving state.

2. Emergency Reporting Instructions: Although permitting parolees and probationers to proceed to a receiving state prior to investigation of a plan should generally be discouraged, there are circumstances which dictate that certain cases be allowed to proceed to a receiving state prior to completion of an investigation.. These circumstances include illness or death in the parolee's or probationer's immediate family or employment. Emergency or provisional travel permits to a receiving state for reasons of employment should not be approved by the Probation and Parole Officer except under the most compelling of circumstances. It must be demonstrated that the individual's adjustment will suffer significantly if travel is not immediately allowed to the other state. It is the responsibility of the Probation and Parole Office to verify the need for immediate travel to the receiving state through the appropriate sources, e.g. physicians, court documents and employers.

There are a number of additional factors that bear on whether an individual be allowed to proceed to another state prior to investigation of a plan and formal acceptance by the receiving

state. Care should be taken to eliminate foreseeable risk to the community. The nature of the parolee or probationer's prior criminal history and adjustment while under supervision are important factors in determining whether the case should be allowed to travel to another sate prior to completing an investigation.

The offender should not be allowed to travel to the receiving state pending transfer unless a legitimate emergency situation exists and emergency reporting instructions have been received. Officers must remember that responsibility for the offender remains with the New Mexico Probation and Parole Division until the receiving state completes an investigation of the plan and accepts all documents related to the transfer prior to allowing the offender to the state. If the offender leaves the state prior to contacting the Probation and Parole Officer, all necessary transfer paperwork should be expedited. When it is forwarded to the receiving state, it should include a request for the offender to sign where appropriate.

3. The Probation and Parole Officer shall attach three copies of supervisory materials to Form PPD-38. Supervisory materials in parole cases should include the Corrections Department's Admission Summary, Certificate of Parole, Out-of-State Travel Permit/Application for Compact Services and Agreement to Return, Form PPD-6 (Attachment E) and photos. In some cases, District office may not have sufficient copies of the photos. It this is so, Central Office will attach the same and mail it to the receiving state.

If applicable, under "comments", advise the receiving state that the parolee was assessed restitution in amount of (fill in the blank) shall be sent directly to the Corrections Department, Probation and Parole Division, Attention: Supervisor, Interstate Services, P.O. Box 27116, Santa Fe, New Mexico 87502-0116. The Supervisor of Interstate Compact Services will forward all payments directly to the appropriate District Office.

If the offender is both a parolee and a probationer, payments

shall be sent directly to the supervising officer (include Probation Officer's name and address).

Upon notification that the offender has been accepted for supervision out-of-state, the supervising officer will prepare the necessary reassessment.

4. Supervisory materials in probation cases consist of Pre-Sentence reports or Post-Sentence Reports.

Conditions of Probation, Judgment and Sentence Out-of-State Travel Permit, Application for Compact Services and Agreement to Return. Attach ne control card to the Central Office's case materials.

If applicable, under "Comments" on Form PPD-38, advise the receiving state that the probationer was assessed restitution in the amount of (fill in the blank). Monthly payments in the amount of (fill in the blank) shall be sent directly to the supervising officer handling the case (include Probation Officer's name and address)

F. Compact Discharges:

1. If the offender is a Compact case and the offender desires to transfer back to the sending state or another state, the procedure will be as follows:

Advise the sending or other state via Form PPD-23 (SPECIAL) as to the offender's proposed plans and request that they initiate the appropriate investigation. The case will be closed at this time, unless the sending state requests continued supervision pending the finalization of the transfer.

2. Discharge of New Mexico Cases Supervised Out-of- State:

When a New Mexico probationer has been transferred out-of-state for supervision under the Compact, the supervising officer of the original sentencing district will DR ("Daily Reminder") the semi-active files 60 days prior to the discharge date. If a current progress report is NOT available 60 days prior to discharge, he/she will write the receiving state and request the same with the supervising officer's recommendation as to the type of discharge. In this manner, the supervising officer will be in the position to apprise the court of the probationer's progress, and can recommend what type of discharge is warranted.

3. The supervising officer will send a follow-up in 30 days. If, at the end of the said 60-day period or discharge date, whichever is sooner, there has been no response from the receiving state, the supervising officer will request what he/she believes to be an appropriate discharge.

UPON RECEIPT OF DISCHARGE, THE SUPER VISING OFFICER SHALL FOR WARD IT, IN TRIPLICATE, THROUGH INTERSTATE SER VICES TO THE RECEIVING STATE WITH FORM PPD-16 ADVISING THAT THE CASE SHOULD BE CLOSED.

4. Closing or Discharging Compact Cases:

When an out-of-state offender has been officially accepted for supervision in New Mexico under the terms of the Compact, the supervising officer will DR the active caseload 60 days prior to the discharge date and will send an up-to date "SPECIAL" cooperative case report on Form PPD-23, summarizing the subject's adjustment to supervision and his/her recommendations. At this time, it is appropriate to advise the sending state that NM will be closing our case on the discharge date.

When closing by discharge, transferring to a third state, or reporting an absconder, do not return case materials unless requested to do so by the sending state. When it is necessary to return case materials, send only materials originally sent to the District Office by the sending state. After the case has been

closed, the case file will be maintained for one year in the District Office and then may be destroyed.

5. Compact Cases Committed to An Adult Institution:

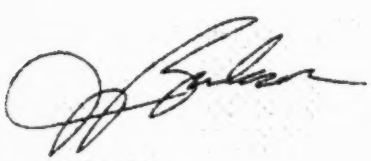
When a Compact case is committed to the New Mexico Corrections Department for re-incarceration on a new crime, Form PPD-23 (SPECIAL) will be prepared as soon as possible, informing the sending state of what has transpired and advising that we are closing our Compact case interest. Attached to Form PPD-23 will be the Judgment and Sentence and Police Report (if not already submitted), in triplicate. The following statement is to be included on the report:

"If you wish to file a detainer on the subject, please communicate directly with the Central Records Unit, P. O. Box 27116, Santa Fe, New Mexico 875020116."

6. Death of A Compact Offender:

In reporting the death of a Compact offender to the sending state, add the following paragraph in regard to a death certificate:

"Upon receipt of a copy of this report in our Probation and Parole Division office in Santa Fe, a death certificate will be requested of the New Mexico Department of Public Health. The certificate, when received, will be mailed to you from our Central Office, Probation and Parole Division."



07/31/02
Date
Jim Burleson, Interim Cabinet Secretary
New Mexico Corrections Department

***31-467.* Adoption of interstate compact for the supervision of adult offenders**

The governor is authorized and directed to enter into a compact on behalf of the state of Arizona with any of the United States lawfully joined in the compact in a form substantially as follows:

ARTICLE I

PURPOSE

A. Arizona and the compacting states to this interstate compact recognize that each state is responsible for the supervision of adult offenders in the community who are authorized pursuant to the bylaws and rules of this compact to travel across state lines both to and from each compacting state in such a manner as to track the location of offenders, transfer supervision authority in an orderly and efficient manner and when necessary return offenders to the originating jurisdictions. The compacting states also recognize that Congress, by enacting the crime control act, 4 United States Code section 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual

assistance in the prevention of crime.

B. It is the purpose of this compact and the interstate commission created under this compact, through means of joint and cooperative action among the compacting states to do all of the following:

1. Provide the framework for the promotion of public safety and protect the rights of victims through the control and regulation of the interstate movement of offenders in the community

2. Provide for the effective tracking, supervision and rehabilitation of these offenders by the sending and receiving states.

3. Equitably distribute the costs, benefits and obligations of the compact among the compacting states.

C. In addition, this compact will do all of the following:

1. Create an interstate commission that will establish uniform procedures to manage the movement between states of adults placed under community supervision and released to the community under the jurisdiction of courts, paroling authorities, corrections or other criminal justice agencies that will promulgate rules to achieve the purpose of this compact.

2. Ensure an opportunity for input and timely notice to victims and to jurisdictions where defined offenders are authorized to travel or to relocate across state lines.

3. Establish a system of uniform data collection, access to information on active cases by authorized criminal justice officials and regular reporting of compact activities to heads of state councils, state executive, judicial and legislative branches and criminal justice administrators.

4. Monitor compliance with rules governing interstate movement of offenders and initiate interventions to address and correct noncompliance.

5. Coordinate training and education regarding regulations of interstate movement of offenders for officials involved in such activity.

D. The compacting states recognize that there is no right of any offender to live in another state and that duly accredited officers of a sending state may at all times enter a receiving state and apprehend and retake any offender under supervision subject to the provisions of this compact and bylaws and rules promulgated under this compact.

E. Compacting states recognize no offender may live in another state when acceptance criteria that has been established or adopted by the compacting state has not been met. It is the policy of the compacting states that the activities conducted by the interstate commission created in this compact are the formation of public policies and are therefore public business.

ARTICLE II

DEFINITIONS

As used in this compact, unless the context otherwise requires:

1. "Adult" means both individuals legally classified as adults and juveniles treated as adults by court order, statute or operation of law.

2. "Bylaws" means those bylaws established by the interstate commission for its governance, or for directing or

controlling the interstate commission's actions or conduct.

3. "Commissioner" means the voting representative of each compacting state appointed pursuant to article IV of this compact.

4. "Compact administrator" means the director of the Arizona department of corrections, who is responsible for the administration and management of Arizona's supervision and transfer of offenders subject to the terms of this compact, the rules adopted by the interstate commission and policies adopted by the state council under this compact.

5. "Compacting state" means any state that has enacted the enabling legislation for this compact.

6. "Interstate commission" means the interstate commission for adult offender supervision established by this compact.

7. "Member" means the commissioner of a compacting state or the commissioner's designee, who shall be a person officially connected with the commissioner.

8. "Noncompacting state" means any state that has not enacted the enabling legislation for this compact.

9. "Offender" means an adult placed under, or subject to, supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, corrections or other criminal justice agencies.

10. "Person" means any individual, corporation, business enterprise, or other legal entity, either public or private.

11. "Rules" means acts of the interstate commission, duly promulgated pursuant to article VIII of this compact,

substantially affecting interested parties in addition to the interstate commission, which shall have the force and effect of law in the compacting states.

12. "State" means a state of the United States, the District of Columbia and any other territorial possessions of the United States.

13. "State council" means the resident members of the state council for interstate adult offender supervision created by each state under article IV of this compact.

ARTICLE III

THE COMPACT COMMISSION

A. This compact creates the interstate commission for adult offender supervision. The interstate commission shall be a body corporate and joint agency of the compacting states. The interstate commission shall have all the responsibilities, powers and duties set forth in the compact, including the power to sue and be sued, and additional powers conferred on it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact. The interstate commission shall consist of commissioners selected and appointed by resident members of a state council for interstate adult offender supervision for each state. In addition to the commissioners who are the voting representatives of each state, the interstate commission shall include individuals who are not commissioners but who are members of interested organizations. The non-commissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general and crime victims. All non-commissioner members of the interstate commission shall be ex officio, nonvoting members. The interstate commission may provide in its bylaws for any

additional, ex officio, nonvoting members it deems necessary.

B. Each compacting state represented at any meeting of the interstate commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the interstate commission. The interstate commission shall meet at least once each calendar year. The chairperson may call additional meetings and, on the request of twenty-seven or more compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

C. The interstate commission shall establish an executive committee that includes commission officers, members and others that are determined by the bylaws. The executive committee may act on behalf of the interstate commission during periods when the interstate commission is not in session, with the exception of rule making or amendment to the compact. The executive committee oversees the day-to-day activities managed by the executive director and interstate commission staff, administers enforcement and compliance with the provisions of the compact, its bylaws and as directed by the interstate commission and performs other duties as directed by the commission or set forth in the bylaws.

ARTICLE IV

THE STATE COUNCIL

A. Arizona shall create a state council for interstate adult offender supervision that is responsible for the appointment of the commissioner who shall serve on the interstate commission from Arizona. The commissioner shall be the compact administrator or designee.

B. The membership of the state council shall include one legislator who is appointed by the speaker of the house of representatives, one legislator who is appointed by the president of the senate, one victim's advocate who is appointed by the governor, the deputy compact administrator of the state department of corrections who is appointed by the director of the state department of corrections, the deputy compact administrator of the administrative office of the courts who is appointed by the director of the administrative office of the courts, one judge who is appointed by the chief justice of the supreme court, one sheriff appointed by the Arizona sheriff's association and any other members determined by the state council.

C. The state council shall exercise oversight and advocacy concerning Arizona's participation in interstate commission activities and other duties as determined by the council's members including the development of policy concerning operations and procedures of the compact within Arizona.

ARTICLE V

POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The interstate commission shall have the following powers and duties:

1. To adopt a seal and suitable bylaws governing the management and operation of the interstate commission.

2. To promulgate rules and take action consistent with this compact.

3. To oversee, supervise and coordinate the interstate movement of offenders subject to the terms of this compact

and any bylaws adopted and rules promulgated by the interstate commission.

4. To enforce compliance with compact provisions, interstate commission rules and by vs, using all necessary and proper means, including judicial process.

5. To establish and maintain offices.

6. To purchase and maintain insurance and bonds.

7. To borrow, accept or contract for services of personnel, including members and members' staffs.

8. To establish and appoint committees and hire staff it deems necessary to carry out its functions, including an executive committee as required by article III that may act on behalf of the interstate commis in carrying out its powers and duties under this compact.

9. To elect or appoint such officers, attorneys, employees, agents or consultants, and to fix their compensation, define their duties and determine their qualifications and to establish the interstate commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation and qualifications of personnel.

10. To accept any and all donations and grants of money, equipment, supplies, materials and services and to receive, utilize and dispose of them.

1. To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal or mixed.

12. To sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property, real, personal

or mixed.

13. To establish a budget and make expenditures and levy dues as provided in article X of this compact.

14. To sue and be sued.

15. To provide for dispute resolution among compacting states.

16. To perform functions necessary or appropriate to achieve the purposes of this compact.

17. To report annually to the legislatures, governors, judiciary and state councils of the compacting states concerning the activities of the interstate commission during the preceding year. The reports shall also include any recommendations that may have been adopted by the interstate commission.

18. To coordinate education, training and public awareness regarding the interstate movement of offenders for officials involved in such activity.

19. To establish uniform standards for the reporting, collecting and exchanging of data.

ARTICLE VI

ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

A. The interstate commission shall, by a majority vote of the members, within twelve months of the first interstate commission meeting, adopt bylaws to govern its conduct necessary or appropriate to carry out the purposes of the compact, including:

1. Establishing the fiscal year of the interstate commission.

2. Establishing an executive committee and other necessary committees.

3. Providing reasonable standards and procedures:

(a) For the establishment of committees, and

(b) Governing any general or specific delegation of any authority or function of the interstate commission.

4. Providing reasonable procedures for calling and conducting meetings of the interstate commission and ensuring reasonable notice of each meeting.

5. Establishing the titles and responsibilities of the officers of the interstate commission.

6. Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the interstate commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws shall exclusively govern the personnel policies and programs of the interstate commission.

7. Providing a mechanism for winding up the operations of the interstate commission and the equitable return of any surplus funds that exist on the termination of the compact after paying or reserving all of its debts and obligations.

8. Providing transition rules for start up administration of the compact.

9. Establishing standards and procedures for compliance and technical assistance in carrying out the compact.

B. The interstate commission shall, by a majority vote of the members, elect from among its members a chairperson and a vice-chairperson, each of whom shall have the powers and duties specified in the bylaws. The chairperson or, in the chairperson's absence or disability, the vice-chairperson, shall preside at all meetings of the interstate commission. The officers elected shall serve without compensation or remuneration from the interstate commission. Subject to the availability of budgeted funds, the officers shall be reimbursed for any actual and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the interstate commission. The interstate commission, through its executive committee, shall appoint or retain an executive director for such period, on terms and conditions and for compensation the interstate commission deems appropriate. The executive director shall serve as secretary to the interstate commission, and hire and supervise other staff authorized by the interstate commission, but shall not be a member.

C. The interstate commission shall maintain its corporate books and records in accordance with the bylaws.

D. The members, officers, executive director and employees of the interstate commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of any actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities. This subsection shall not be construed to protect any person from suit or liability for any damage, loss, injury or liability caused by the intentional or willful and wanton misconduct of any person. The interstate commission shall defend the commissioner of a compacting state, or his or her representatives or employees, or the interstate

commission's representatives or employees, in any civil action seeking to impose liability, arising out of any actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of interstate commission employment, duties or responsibilities, if the actual or alleged act, error or omission did not result from intentional wrongdoing on the part of the person. The interstate commission shall indemnify and hold the commissioner of a compacting state, the appointed designee or employees, or the interstate commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties or responsibilities, provided that the actual or alleged act, error or omission did not result from gross negligence or intentional wrongdoing on the part of the person.

ARTICLE VII

ACTIVITIES OF THE INTERSTATE COMMISSION

A. The interstate commission shall meet and take actions consistent with the provisions of this compact.

B. Except as otherwise provided in this compact and unless a greater percentage is required by the bylaws, in order to constitute an act of the interstate commission, the act must be taken at a meeting of the interstate commission and must receive an affirmative vote of a majority of the members present.

C. Each member of the interstate commission has the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the interstate commission. A member shall vote in person on behalf of the state and shall not delegate a vote to another member state. However, a state council shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the member state at a specified meeting. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication. Any voting conducted by telephone, or other means of telecommunication or electronic communication, is subject to the same quorum requirements of meetings at which members are present in person.

D. The interstate commission shall meet at least once during each calendar year. The chairperson of the interstate commission may call additional meetings at any time and, on the request of a majority of the members, shall call additional meetings.

E. The interstate commission's bylaws shall establish conditions and procedures under which the interstate commission shall make its information and official records available to the public for inspection or copying. The interstate commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests. In promulgating the rules, the interstate commission may make available to law enforcement agencies records and information otherwise exempt from disclosure, and may enter into agreements with law enforcement agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

F. Public notice shall be given of all meetings and all

meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The interstate commission shall promulgate rules consistent with the principles contained in the government in sunshine act (5 United States Code section 552b). The interstate commission and any of its committees may close a meeting to the public if it determines by two-thirds vote that an open meeting would be likely to:

1. Relate solely to the interstate commission's internal personnel practices and procedures.

2. Disclose matters specifically exempted from disclosure by statute.

3. Disclose trade secrets or commercial or financial information that is privileged or confidential.

4. Involve accusing any person of a crime, or formally censuring any person.

5. Disclose information of a personal nature if disclosure would constitute a clearly unwarranted invasion of personal privacy.

6. Disclose investigatory records compiled for law enforcement purposes.

7. Disclose information contained in or related to examination, operating or condition reports prepared by, or on behalf of or for the use of, the interstate commission with respect to a regulated entity for the purpose of regulation or supervision of the entity.

8. Disclose information, the premature disclosure of which would significantly endanger the life of a person or the stability of a regulated entity.

9. Specifically relate to the interstate commission's issuance of a subpoena or its participation in a civil action or proceeding.

G. For every meeting closed pursuant to subsection F, the interstate commission's chief legal officer shall publicly certify that, in the legal officer's opinion, the meeting may be closed to the public and shall reference each relevant exemptive provision. The interstate commission shall keep minutes that shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons for the actions taken, including a description of each of the views expressed on any item and the record of any roll call vote, reflected in the vote of each member on the question. All documents considered in connection with any action shall be identified in the minutes. The interstate commission shall collect standardized data concerning the interstate movement of offenders as directed through its bylaws and rules that specify the data to be collected, the means of collection and data exchange and reporting requirements.

ARTICLE VIII

RULE MAKING FUNCTIONS OF THE INTERSTATE COMMISSION

A. The interstate commission shall promulgate rules to effectively and efficiently achieve the purposes of the compact including transition rules governing administration of the compact during the period in which it is being considered and enacted by the states. Rule making shall occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant to this article. The rule making shall substantially conform to the principles of the federal administrative procedure act, 5 U.S.C.S. section 551

et seq., and the federal advisory committee act, 5 U.S.C.S. app. 2, section 1 et seq., as may be amended. All rules and amendments are binding on the date specified in each rule or amendment.

B. If a majority of the legislatures of the compacting states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact, then the rule has no further force and effect in any compacting state.

C. When promulgating a rule, the interstate commission shall:

1. Publish the proposed rule stating with particularity the text of the rule that is proposed and the reason for the proposed rule.

2. Allow persons to submit written data, facts, opinions and arguments, which shall be publicly available.

3. Provide an opportunity for an informal hearing.

4. Promulgate a final rule and its effective date, if appropriate, based on the rule making record.

D. Not later than sixty days after a rule is promulgated, any interested person may file a petition in the United States district court for the District of Columbia or in the federal district court where the interstate commission's principal office is located for judicial review of the rule. If the court finds that the interstate commission's action is not supported by substantial evidence as defined in the federal administrative procedure act, in the rule making record, the court shall hold the rule unlawful and set it aside. Subjects to be addressed within twelve months after the first meeting must at a minimum include:

1. Notice to victims and opportunity to be heard.

2. Offender registration and compliance.

3. Violations and returns.

4. Transfer procedures and forms.

5. Eligibility for transfer.

6. Collection of restitution and fees from offenders.

7. Data collection and reporting.

8. The level of supervision to be provided by the receiving state.

9. Transition rules governing the operation of the compact and the interstate commission during all or part of the period between the effective date of the compact and the date on which the last eligible state adopts the compact.

10. Mediation, arbitration and dispute resolution.

E. The existing rules governing the operation of the previous compact superseded by this act shall be null and void twelve months after the first meeting of the interstate commission created under this compact.

F. On determination by the interstate commission that an emergency exists, it may promulgate an emergency rule that is effective immediately on adoption, provided that the usual rule making procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, in no event later than ninety days after the effective date of the rule.

ARTICLE IX

OVERSIGHT, ENFORCEMENT AND DISPUTE RESOLUTION BY THE INTERSTATE COMMISSION

A. The interstate commission shall oversee the interstate movement of adult offenders in the compacting states and shall monitor such activities being administered in non compacting states that significantly affect compacting states. The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact that may affect the powers, responsibilities or actions of the interstate commission, the interstate commission is entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.

B. The compacting states shall report to the interstate commission on issues or activities of concern to them and cooperate with and support the interstate commission in the discharge of its duties and responsibilities. The interstate commission shall attempt to resolve any disputes or other issues that are subject to the compact and that may arise among compacting states and non compacting states. The interstate commission shall enact bylaws or promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

C. The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions of this compact using any or all means set forth in article XII, subsection B of this compact.

ARTICLE X

FINANCE

A. The interstate commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.

B. The interstate commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the interstate commission and its staff that must be in a total amount sufficient to cover the interstate commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based on a formula to be determined by the interstate commission, taking into consideration the population of the state and the volume of interstate movement of offenders in each compacting state and shall promulgate a rule binding on all compacting states that governs the assessment. Arizona's assessment shall not exceed twenty-five thousand dollars per year unless approved by the state council and appropriated by the legislature.

C. The interstate commission shall not incur any obligations of any kind before securing the funds adequate to meet the obligations and shall not pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

D. The interstate commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the interstate commission are subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the interstate commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual

report of the interstate commission.

ARTICLE XI

COMPACTING STATES, EFFECTIVE DATE AND AMENDMENTS

Any state, as defined in article II of this compact, is e. ible to become a compacting state. The compact shall become effective and binding on legislative enactment of the compact into law by no less than thirty-five states. The initial effective date shall be the later of July 1, 2001, or on enactment into law by the thirty-fifth state. Thereafter it is effective and binding, as to any other compacting state, on enactment of the compact into law by that state. The governors of nonmember states or their designees shall be invited to participate in interstate commission activities on a nonvoting basis before adoption of the compact by all states and territories of the United States.

B. Amendments to the compact may be proposed by the interstate commission for enactment by the compacting states. No amendment is effective and binding on the interstate commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

ARTICLE XII

WITHDRAWAL, DEFAULT, TERMINATION AND JUDICIAL ENFORCEMENT

A. Once effective, the compact shall continue in force and remain binding on each compacting state. A compacting state may withdraw from the compact by enacting a statute specifically repealing the statute that enacted the compact. The effective date of withdrawal is the effective date of the

repeal. The withdrawing state shall immediately notify the chairperson of the interstate commission in writing on the introduction of legislation repealing this compact in the withdrawing state. The interstate commission shall notify the other compacting states of the withdrawing state's intent to withdraw within sixty days of its receipt thereof. The withdrawing state is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal. Reinstatement following withdrawal of any compacting state shall occur on the withdrawing state reenacting the compact or on such later date determined by the interstate commission.

B. If the interstate commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, the bylaws or any duly promulgated rules the interstate commission may impose any or all of the following penalties:

1. Fines, fees and costs in amounts deemed to be reasonable as fixed by the interstate commission.

2. Remedial training and technical assistance as directed by the interstate commission.

3. Suspension and termination of membership in the compact. Suspension shall be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted. Immediate notice of suspension shall be given by the interstate commission to the governor, the chief justice or chief judicial officer of the state, the majority and minority leaders of the defaulting state's legislature and the state council. The grounds for default include failure of a compacting state to perform

obligations or responsibilities imposed on it by this compact, interstate commission bylaws or duly promulgated rules. The interstate commission shall immediately notify the defaulting state in writing of the penalty imposed by the interstate commission on the defaulting state pending a cure of the default. The interstate commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the interstate commission, in addition to any other penalties imposed in this subsection, the defaulting state may be terminated from the compact on an affirmative vote of a majority of the compacting states and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of suspension. Within sixty days of the effective date of termination of a defaulting state, the interstate commission shall notify the governor, the chief justice or chief judicial officer and the majority and minority leaders of the defaulting state's legislature and the state council of the termination. The defaulting state is responsible for all assessments, obligations and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination. The interstate commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed on between the interstate commission and the defaulting state. Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the interstate commission pursuant to the rules.

C. The interstate commission, by majority vote of the members, may initiate legal action in the United States district court for the District of Columbia or, at the discretion of the interstate commission, in the federal district where the interstate commission has its offices to enforce compliance with the provisions of the compact or its duly promulgated

rules and bylaws, against any compacting state in default. If judicial enforcement is necessary, the prevailing party shall be awarded all costs of the litigation including reasonable attorney fees.

D. The compact dissolves effective on the date of the withdrawal or default of the compacting state that reduces membership in the compact to one compacting state. On the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect and the business and affairs of the interstate commission shall be wound up and any surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XIII

SEVERABILITY AND CONSTRUCTION

A. The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

B. The provisions of this compact shall be liberally constructed to effectuate its purposes.

ARTICLE XIV

EFFECT OF COMPACT

A. This compact does not diminish the constitutional authority of the Arizona legislature.

B. This compact is not contrary to any law of the state of Arizona. Notwithstanding any other law of the state of Arizona, this compact shall govern the interstate supervision of adult offenders.

C. The interstate commission shall promulgate rules and take action consistent with this compact that are binding on the state of Arizona as to the interstate supervision of adult offenders unless and to the extent the rules or action conflict with Arizona statutes.

D. Nothing in this section prevents the enforcement of any other Arizona law that is not inconsistent with this compact.

E. All agreements between the interstate commission and the compacting states are binding in accordance with the terms of the agreement. On the request of a party to a conflict over meaning or interpretation of interstate commission actions, and on a majority vote of the compacting states, the interstate commission may issue advisory opinions regarding such meaning or interpretation.

F. If any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers or jurisdiction sought to be conferred by the provision on the interstate commission is ineffective and the obligations, duties, powers or jurisdiction shall remain in the compacting state and shall be exercised by the agency to which the obligations, duties, powers or jurisdiction are delegated by law in effect at the time this compact becomes effective.

The Parole and Probation Compact Administrators' Association

Manual

Chapter 3

Rules

With rules effective March 28, 2001

Appendix K

CHAPTER 3

RULES

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RULES OF PRACTICE

A major portion of the final recommendations of the National Commission to Restructure the Compact consisted of Rules of Practice for the operation of the Compact and Compact Offices. Minor amendments to the Rules were adopted by the Parole and Probation Compact Administrators' Association and have been incorporated in the Rules as set forth herein. These rules are promulgated under the Compact .provision allowing the administrators of the various states to jointly adopt rules of procedure for operations under the Compact.

RULES FOR OPERATIONS UNDER THE COMPACT

SECTION 100 - LEGAL NOTES ON THE COMPACT

Section 1-100.
DEFINITIONS (Family definition revised 3/28/2001)

(A) Absconder - A parolee or probationer is considered as an absconder when he/she fails to report and his or her whereabouts are unknown. It must be verified that the offender is no longer living at his or her listed residence. An unsuccessful effort to locate the offender through his/her employment is also required.

(B) Civil Probation or Parole - Shall refer to persons whose freedom or activities are subject to limitation, supervision, or other restraint where such limitation, supervision, or restraint originates from charges brought against such individual which are civil and not criminal in nature.

(C) Concurrent Supervision - Supervision of a parolee or probationer by two separate authorities, i.e., federal and state authorities jointly. This term is also applied when an offender is being supervised by a state for a conviction received in that state as well as convictions received in one or more sending states.

(D) Conditional Release - Shall refer to those persons who have been released from incarceration after adjudication of guilt and sentencing with such continued release contingent for a period of time upon the adherence by such person to specified conditions.

(E) Court Ordered Transfer - A Court Order Transfer is one in which the transfer is authorized on a written order on the record executed by a Court in a criminal proceeding pertaining to a person supervised or to be supervised under the Compact. Suggested wording would be - supervision may be transferred to (receiving state).

(F) Detainer - an order to hold a parolee or probationer in custody.

(G) Discharge - final completion of the sentence which was imposed

on offender by the sending state.

(H) Extradition - Delivery from one state to another of a fugitive upon agreement of the governor or chief executive of the state in which the fugitive is found. Return of parolees or probationers under the terms of the Compact agreement can preclude formal extradition.

(I) Extraordinary Medical Condition - Medical conditions in offenders which include infectious diseases, diagnosed psychological disorders or medical conditions that may affect the course of the supervision by the receiving state.

(J) Failure to Report - This term applies to a parolee or probationer whose whereabouts are known but who fails to report to his/her assigned officer as ordered or directed.

(K) Family – Shall be parents, grandparents, adult children, adult siblings, legal spouse, legal guardian, and step-parent. (Effective 3/28/2001)

(L) Misdemeanant - A person convicted of a minor offense for which the sending state's statute provides a lesser penalty than for a felony.

(M) Non-Convicted Offender - Shall mean offenders for whom a court has ordered supervision prior to an adjudication of guilt, including individuals released to supervision on their own recognizance. Non-convicted offenders may be supervised under the Compact only pursuant to agreement by the sending and receiving states where statutory authority exists.

(N) Parole - A release from prison, given to a prisoner before expiration of sentence, on condition of future good behavior.

(O) Pre-Parole Investigation - Shall mean any investigation or inquiry regarding an individual who has requested transfer under the Compact which relates either to that individual's release, parole or suitability for transfer.

(P) Probable Cause Hearing - A hearing conducted in behalf of a parole or probation violator in compliance with the U.S. Supreme

Court's rulings in *Morrissey v. Brewer* and *Gagnon v. Scarpelli.* Also referred to as a Preliminary Hearing, Preliminary Probable Cause Hearing, On-Site Hearing or On-Site Probable Cause Hearing.

(Q) Probation - Shall mean court-order supervision after a plea of guilty or a trial and adjudication of guilt.

(R) Post-Sentence - Shall refer to the time period after a court has, based upon a plea or adjudication of guilt, determined condi nally or otherwise the penalty for an offense and has announced said penalty in open court or in an open or closed record of said court.

(S) Provisional Travel Permit - A travel permit issued to allow an offender to travel to a receiving state for the purpose of transfer of supervision.

(T) Receiving State - In the process of transfer of supervision of parolees or probationers, the state which is requested to assume supervision of an offender.

(U) Resident - For the purpose of transfer of supervision under the terms of the Compact, a parolee or probationer ma be considered a resident of a state if the offender has been an actua ibitant of such state continuously for more than one year prio coming to the sending state and has not resided within the sendi state more than six continuous months immediately preceding the commission of the offense for which the offender has been convicted.

(V) Rule Variance - An exception to the "Rules For Operations Under The Compact," agreed upon in writing by two states, to facilitate handling of the case of an offender in which they have some mutual interest.

(W) Sending State - In the process of transfer of supervision of a parolee or probationer, the state requesting transfer of supervision.

(X) Special Condition - Conditions or terms added to the standard conditions of parole or probation by either the sending or receiving state.

(Y) Special Investigation - A non-Compact investigation, usu ly an

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investigation of arrest or conviction of a parole or probationer in behalf of another state on a courtesy basis.

(Z) Supervision Fee - A fee collected to compensate for the cost of supervision of an offender.

(AA) Temporary Travel Permit - A travel permit issued to allow an offender to visit another state for a period not to exceed thirty (30) days. This type of travel permit is not used in conjunction with travel for the purpose of transfer of supervision.

(BB) Third Party State - In the process of transfer of supervision of a parolee or probationer, a state, other than the original receiving state, that is requested to assume supervision of an offender. Also a state, other than the sending or receiving state, to which a parole or probation violator may have fled or absconded.

(CC) Waiver - A formal written statement relinquishing some right, claim or privilege.

Section 1-101.
CONGRESSIONAL CONSENT

The Interstate Compact for the Supervision of Probationers and Parolees is authorized by Congress under the Crime Control Act of 1934.

Commentary

The Interstate Compact for the Supervision of Probationers and Parolees was developed by the states under the Congressional consent given in advance by the Crime Control Act of 1934 which states in part: " [A]n Act granting consent of Congress to any two or more states to enter into agreements or compacts for cooperative efforts and mutual assistance in the prevention of crime and for other purposes."

There is a solid foundation of legal precedent supporting the legality and constitutionality of the Interstate Compact for the Supervision of Probationers and Parolees. To date, no state court of last resort has ever handed down an unfavorable decision. The legality and constitutionality of the Compact has also been tested in the federal courts, again with no unfavorable decision having been issued against the Interstate Compact. The law of interstate compacts as interpreted by the U.S. Supreme Court is clear that interstate compacts are the highest form of state statutory law, having precedence over conflicting state statutes and obligating the member states to the

provisions of the agreement as though it were a binding contract as well as a statute entered into by the member states. See the Legal Digest for citations and summaries of court decisions.1

Section 1-102.
VIOLATIONS OF INTERSTATE COMPACT AND GRIEVANCE PROCEDURE
(Effective 3/28/2001)

Violations of the Interstate Compact Agreement shall initially be addressed informally by the states involved in the dispute. If a resolution cannot be reached a formal grievance shall be initiated. The grievance process shall address the issue through the following steps:

> Step 1: The complaining state shall contact the working individual (Compact Administrator or Deputy Compact Administrator) in the offending state by mail, electronic correspondence, or by phone in an effort to resolve the dispute informally.
>
> Step 2: If the dispute cannot be resolved at the informal level a Parole and Probation Compact Administrators' Association Grievance Form, with all necessary attachments, shall be forwarded to The Executive Council Chair and the

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1 1 See also Aveline, 728 A.2d at 1257 n.10 (found in McComb v. Wambaugh, 934 F.2d 474 (3rd Cir. 1991) observed that:

[c]ompacts have the characteristics of contracts because the enactment of the compact terms as part of an enabling statue by one state is viewed as an offer. The offer may be accepted through enactment of statues, including the same compact terms by another state. As with other contracts, the Contract Clause of the United States Constitution protects compacts from impairment by the states. This means that upon enacting a compact, it takes precedence over the subsequent statues of signatory states and, as such, a state may not unilaterally nullify, revoke or amend one of its compacts if the compact does not so provide." (Internal citation omitted.)_

Compact Administrator of the offending state. The Executive Council Chair shall discuss the grievance with the involved states and provide a written informal opinion to them within five working days. The involved states shall indicate acceptance or rejection of the opinion on the grievance form within five working days. If any involved state(s) rejects the written opinion, the grievance wil proceed to Step 3. The Executive Council Chair is prohibited from participating in a grievance involving his or her own state. In such cases the grievance would be forwarded to the PPCAA President-Elect.

Step 3: The Executive Council Chair shall convene the Council.

a. The Council shall render a ruling on the grievance within ten working days.
b. The President Elect may serve as a substitute for a Council member in the event of an absence or if there is a conflict of interest.
c. The Executive Council Chair shall forward a decision to the Compact Administrator of the Offending State, the Governor of the Offending State, and the Compact Administrator of the complaining state. If appropriate, a time frame shall be set for the offending state to comply with the Council ruling.

Step 4: If the offending state fails to comply with the ruling the complaining state shall send a written notification to the Executive Council Chair. The Council shall be convened to impose sanctions on the offending state. Sanctions available to the Council are as follows:

a. Seek the assistance of the offending state's legal counsel.
b. Seek the assistance of the offending state's Attorney General.
c. Seek the assistance of the United States Attorney General.

d. Orchestrate a succession of letters from neutral states urging reconsideration by the offending state.
e. Write a letter of reprimand to the offending state's Compact Administrator or Deputy Compact Administrator with copies to the Administrators' immediate superior.
f. Write a letter of reprimand to the offending state's Compact Administrator or Deputy Compact Administrator with copies to the Administrator's immediate superior and the Governor.
g. Write a letter of complaint to the Governor of the offending state.
h. Seek the assistance of the Legislature of the offending state.
i. Request a vote of censure by the full membership of the PPCAA.
j. Request the withdrawal of the offending state from the Compact through the appropriate legislative process.
k. Take necessary and appropriate legal action.
l. Other -as the particular situation suggests.

Step 5: The Executive Council will monitor the sanctions imposed until the final outcome of the process.

(See Chapter 4 (forms) for Grievance form)

Section 1-103.
COMPUTER AUTOMATION

A receiving state shall accept as sufficient for investigation and/or acceptance for supervision data transferred to it from an automated system pursuant to any requirements imposed by the Compact Administrators or these rules.

Commentary

This section assumes that the intent of the drafters of the Compact was to use the most efficient means available for Compact operations.

The advent of automation technology was not recognized in the Compact rules previously. This section recognizes the availability of such means for information transfer, and legitimizes such transfers under the agreement methods available in the transfer of information.

Section 1-104.
AMENDMENTS TO THE RULES AND REGULATIONS

Amendments to these rules and regulations shall be adopted finally when agreed to by three-fifths of the administrators of the states signatory to the Compact.

Commentary

Article 5 of the Compact provides that the administrators shall promulgate such rules and regulations as may be deemed necessary to more effectively carry out the terms of the Compact. The rules and regulations in the Compact Manual carry the same authority as the Compact, therefore it is desirable that amendments or changes be made only after adequate study and consideration have been given to the subject by the administrators. Upon adoption of a rule, however, all states shall give the same credence to the rules and regulations as given to the Compact.

Section 1-105.
NUMBER OF ADMINISTRATORS/DEPUTY COMPACT ADMINISTRATORS

Each state shall have one Compact Administrator and no more than two Deputy Compact Administrators designated by the Administrator thereof.

Commentary

The framers of the Compact understood that in order to ensure consistency in the interpretation of the Compact and uniformity in application, a limited number of Administrators/Deputy Compact Administrators was necessary. Information shall be channeled through Compact Offices and the Administrator and Deputies are responsible for dissemination.

SECTION 200 ELIGIBILITY FOR SUPERVISION

Section 2-101.
ELIGIBILITY FOR SUPERVISION

Any state (sending state) who is a party to the Compact may permit any probationer or parolee to reside in any other state (receiving state) party to this Compact, while on probation or parole, if:

(a) such person is in fact a resident of or has family residing within the receiving state and can obtain employment there. The offender shall have an offer of employment or a visible means of support;

(b) though not a resident of the receiving state and not having family residing there, the receiving state consents to such person being sent.

Commentary

Article (1) of the Interstate Compact for the Supervision of Probationers and Parolees provides that "it shall be competent for the duly constituted judicial and administrative authorities of a state party to this Compact (herein called 'sending state'), to permit any person convicted of an offense within such state and placed on probation or released on parole to reside in any other state party to this Compact (herein called 'receiving state'), while on probation or parole, if (a) such person is in fact a resident of or has family residing within the receiving state and can obtain employment there. The offender shall have an offer of employment or a visible means of support;

(b) though not a resident of the receiving state and not having family residing there, the receiving state consents to such person being sent there. Before granting such permission, opportunity shall be granted to the receiving state to investigate the home and prospective employment of such person.

A resident of the receiving state, within the meaning of this section, is one who has been an actual inhabitant of such state continuously for more than one (1) year prior to coming to the sending state and has

not resided within the sending state more than six (6) continuous months immediately preceding the commission of the offense for which the conviction occurred.

The Association has refused to adopt proposals for rigid interpretations of the Compact's language regarding residence, family, and employment. The view has always been that the language must be representative of the collaborative effort of its members which makes the Compact a success. The Association's view of desirable policy regarding acceptance of cases for supervision is that individuals should be accepted not only when they have legal residence or relatives in the receiving state, but also when it appears there is a plan for the individual which has merit and will serve to aid in the ultimate rehabilitation of the offender. There may be state laws requiring parolees to have jobs before leaving prison. This would not be applicable to persons sent from other states for supervision.

The receiving state serves only as agent of the sending state and may not determine the conditions of parole or probation in the sending state, but may and should offer recommendations pertaining to such conditions, and impose its own special conditions effective within the receiving state. There is nothing restrictive in the Compact language referring to felony offenses and/or misdemeanor offenses. The Compact covers any infraction of the law, major or minor, for which there has been a conviction.

Section 2-102.
MILITARY PERSONNEL

Military personnel shall be processed as any other Compact case, however, mere physical presence in another state for military service does not change residence for purposes of the Compact.

Section 2-103.
CONCURRENT SUPERVISION (Revised 1-27-98)

A probationer or parolee who is sent to another state for concurrent supervision under the Compact, shall be processed and supervised in the same manner as any other Compact case.

Should there be an occasion when the receiving state rejects a concurrent supervision case, it shall provide annual progress reports, if requested by the sending state, until the closing of the rejecting state's case or upon expiration of the sending state's case, whichever occurs first. The rejecting state shall immediately notify the sending state of any violation or termination of supervision in its case.

Each progress report shall address the offender's living arrangements, employment, and response to supervision.

Commentary

The Parole and Probation Compact Administrators' Association encourages the acceptance of supervision in these situations as a matter of expediency and public safety. Clearly the sending state has an interest in monitoring the offender's adjustment while he/she resides in the receiving state. Any special conditions imposed in the order for supervision are assumed to be written as enhancements to the supervision plan and should be addressed by the supervising agency. It is important for the receiving state to recognize those interests and cooperate by providing information to the sending state, if not supervision under the Compact.

Section 2-104.
JUVENILES (Effective 3/28/2001)

No juvenile shall be eligible for supervision under the Compact unless the juvenile has been convicted in judicial proceedings as an adult, requiring adult supervision.

Commentary

Since adjudication of delinquency is not considered a "conviction," generally, juveniles are not eligible for supervision under the Interstate Parole and Probation Compact.

Section 2-105.
MERCHANT SEAMEN

Permission to serve in the Merchant Marine may be granted only in select cases. No parolee/probationer may do so unless the parolee or probationer was a Merchant Seaman (with papers) prior to commitment.

Commentary

Permission to serve in the Merchant Marine should only be granted in select cases and only if the individual was a Merchant Seaman (with papers) prior to commitment. If the individual is scheduled to remain in an out-of-state port for a substantial amount of time, the receiving state's administrator should be notified and given the opportunity to provide supervision.

Section 2-106.
PRETRIAL DIVERSION CASES

Member states of the Compact may enter into agreements under the Compact with other member states where statutory authority exists under which non-convicted persons may be supervised.

Commentary

At the time of adoption of the Compact, pre-trial diversion and similar pre-conviction programs for dealing with offenders were not

in frequent use. The development of such programs over recent decades requires that Compact rules be altered to allow for such cases to be handled under the Compact pursuant to agreements that individual Compact states may make with one another. It is the intent of this section to allow such agreements to occur.

Section 2-107.
MISDEMEANANTS

Misdemeanants are eligible for supervision under the Compact.

Section 2-108.
FURLOUGH, WORK RELEASE, OR OTHER PRE-PAROLE RELEASE

No offender released on furlough, work release, or any other pre-parole release program is eligible for supervision under the Compact.

Commentary

Offenders released on furlough, work release, or any other pre-parole release are not eligible for supervision as Compact cases, and cannot be returned as violators under the Compact.

Section 2-109.
NON-CONVICTED OFFENDERS

Non-convicted persons who are subject under order of a court to be supervised are not ordinarily subject to supervision under the Compact. However, where reciprocal legislation or other law exists allowing such transfer and supervision, states may do so pursuant to the other authorizing law.

Commentary

When the Compact was entered into in 1937, diversion programs and other supervisory programs not involving conviction did not exist. The language of the Compact explicitly states that it is for "... any person convicted of an offense," therefore, non-convicted persons on probation are technically not eligible for supervision under the

Compact. However, it is the position of the PPCAA that a non-convicted person who is subject under order of a court to be supervised may be transferred under the Compact if both the sending and receiving states agree to transfer.

Section 2-110.
SPECIAL CONDITIONS

A) Any receiving state which chooses not to enforce or is not able to enforce a special condition placed upon a parolee or probationer by the sending state shall notify the sending state, as soon as is possible, that the special condition will not be enforced.

B) Any receiving state which imposes an additional condition upon a parolee or probationer shall notify the sending state of said condition as soon as is possible.

Commentary

Whenever a special condition is imposed on a parolee or probationer, the sending state shall, as a part of a request for transfer, fully disclose the special condition, the reason for its existence, and all related information to the receiving state. The receiving state should make every effort to meet the special condition. If a receiving state chooses or is not able to enforce a special condition upon a parolee or probationer, the sending state must be notified that the special condition will not be enforced. The sending state may then choose to either decline to transfer the offender or to transfer the offender with knowledge that the special condition will not be enforced. Where such conditions cannot be enforced, they should be altered by the sending state in accordance with its procedures. Special conditions may be imposed by receiving states as well as by sending states. This section recognizes this and imposes a duty upon the receiving state to notify the sending state of any additional conditions imposed upon the parolee or probationer. See PPCAA Executive Council Rulings Section, Ruling No. 1 - Receiving State's Right to Add Special Conditions.

Section 2-111.
EXTRAORDINARY MEDICAL/PSYCHOLOGICAL CONDITIONS

When transferring under the Interstate Compact a parolee or probationer with an extraordinary medical/psychological condition the sending state shall fully disclose all relevant known information regarding an offender's condition and shall obtain a signed waiver from the offender allowing for such disclosure.

Commentary

When transferring under the Interstate Compact a parolee or probationer with an extraordinary medical/psychological condition such as an infectious disease, the sending state must fully disclose all relevant known information regarding the offender's condition. A sending state must also obtain a signed waiver from the offender allowing for such disclosure. The clear intent of the Compact itself as well as this provision is to hold that where a parolee or probationer otherwise meets the eligibility requirements of the Compact for mandatory acceptance, states may not reject such a transfer because of the existence of an extraordinary medical/psychological condition.

Section 2-112.
VICTIM NOTIFICATION (Effective 3/28/2001)

Victim notification requirements are the responsibility of the sending state in accordance with the laws and policies of the sending state. The sending state will request information as necessary to fulfill victim notification requirements. The receiving state will respond to requests from the sending state within five (5) working days.

To assure compliance and proper handling of victim issues within the receiving state, the interstate compact office of the receiving state shall be the initial point of contact for referral of all victim issues.

Commentary: Many states have victim laws whose requirements vary widely. The Council's intent is to design a rule that allows states the flexibility to comply with their laws. Any special victim issues in a case should be communicated to the receiving state at the time of the transfer request or when necessary. The Council realizes

that all requested information may not be available within five (5) working days. If this is the case, the response within the five-day period should indicate the anticipated date of completion.

SECTION 300 ARRANGEMENTS FOR SUPERVISION: STANDARDS AND PROCEDURES

Section 3-101.
OPPORTUNITY TO INVESTIGATE - Revised 1-27-98

INVESTIGATION OF PAROLE AND PROBATION PLAN

Any parolee or probationer residing outside the jurisdiction of the sentencing state must be referred for a transfer investigation and decision by the state in which he/she resides. In all cases, except emergency situations, or probation cases in which the offender already lives in the receiving state at the time of sentencing, the receiving state shall be given the opportunity to investigate the prospective plan of the individual prior to movement to the receiving state.

I. PROBATION PLAN INVESTIGATION WHEN OFFENDER RESIDES IN ANOTHER JURISDICTION AT THE TIME OF SENTENCING

When an offender has been placed on probation and lives in another state at the time of sentencing the offender may be given a provisional travel permit and be allowed to return to his/her home pending an investigation by the receiving state.

Upon knowledge of the sending state's Interstate Compact Office that the probationer has returned to the receiving state, the sending state shall immediately notify the receiving state of the offender's presence in the receiving state.

The sending state shall request reporting instructions and the receiving state may provide reporting instructions at its discretion.

The sending state shall remain responsible for supervision of the case until the receiving state completes an investigation and accepts a transfer of supervision.

The sending state shall mail the proposed transfer request to the receiving state no later than twenty-one calendar days after notification of the offender's presence in the receiving state. The

transfer request shall contain 2 copies of a completed PPCAA Form IA, ? Investigation Request? , and all other appropriate information as outlined in Rule 3-103.

A completed investigation containing an acceptance or rejection shall be sent by the receiving state to the sending state within 45 days of the receipt of the investigation request by the receiving state's Interstate Compact Office.

the receiving state rejects supervision, it is the responsibility of the sending state to arrange for the removal of the ; pationer from the receiving state.

II. PRE-PAROLE PLAN INVESTIGATION

The nding state shall mail the proposed pre-parole plan to the receiving state no sooner that 90 (ninety) days in advance of the planned placement.

The sending state must send two (2) completed copies of Form IA, ? Investigation Request and all other appropriate information as outlined in Rule 3-103 ? Request for Supervision Information. The receiving state must acknowledge in writing receipt of the case.

A completed investigation containing an acceptance with reporting instructions or a rejection shall be sent to the sending state within 45 days of receipt of the investigation request by the receiving state's Interstate Compact Office.

If a parolee has not proceeded to the receiving state within 120 days after acceptance or confirmation of the validity of the original plan by the receiving state, the receiving state may withdraw its acceptance and close interest with notification to the sending state. The sending state may ask for a reinvestigation of the proposed plan but shall await another acceptance prior allowing the parolee to proceed.

III. INVESTIGATION PLAN OF PAROLEE OR PROBATIONER PRESENTLY UNDER SUPERVI N - Non Emergency

An offender already under supervision who is requesting transfer to another jurisdiction shall remain in the state where he/she is residing

until the receiving state accepts the case for supervision or at its discretion, provides reporting instructions. The receiving state shall complete the investigation and notify the sending state of its decision within 45 days of receipt of the transfer request in the receiving state's Interstate Compact Office. All acceptance decisions should also include reporting instructions.

IV. EMERGENCY INVESTIGATION REQUEST FOR PAROLEE OR PROBATIONER PRESENTLY UNDER SUPERVISION. (DISCRETION OF RECEIVING STATE)

A state may request an Emergency Investigation of any parole or probation plan if it believes an actual emergency exists.

If the receiving state agrees that an emergency exists and consents to perform an emergency investigation, the sending state shall immediately send to the receiving state by facsimile or electronic mail all documents delineated in rule 3-103.

The receiving state may, upon its discretion, provide reporting instructions. The receiving state may complete an investigation within fifteen business days and advise if the plan is acceptable immediately upon completion of the investigation. If the transfer is accepted and prior reporting instructions have not been provided, the acceptance should include reporting instructions. If reporting instructions were previously granted, the offender shall be placed under immediate supervision.

If the plan is rejected by the receiving state and reporting instructions were previously provided, the offender must immediately return to the sending state. It shall be the responsibility of the sending state to ensure that the offender returns.

If the receiving state does not agree that an emergency exists, this section is not applicable and the transfer shall be governed by section III of this rule.

COMMENTARY: Although permitting offenders to proceed to a receiving state prior to investigation and acceptance of a plan should be generally discourages, there are circumstances which dictate the offender's travel there are a necessity. These circumstances include

probationers who already reside in the receiving state at the time of sentencing, or an emergency situation such as a death in the immediate family which requires the offender's presence to provide continued exclusive care of elderly or dependent relatives, or the imminent threat of the loss of employment. Typically no offender should be allowed to proceed as the result of an emergency situation unless the receiving state has been informed and agrees that an emergency exists. It is the responsibility of the sending state to verify the need for immediate travel to the receiving state through the appropriate sources ie, physicians, employers, landlords, and Court documents. The nature of the offender's present offense, prior criminal history, risk to the community, and adjustment to supervision are important factors in determining whether the offender should be allowed to travel to another state prior to completion of an investigation.

In all cases where the offender has been, or will be, allowed to travel to the receiving state pending transfer, it is the responsibility of the sending state to immediately notify the receiving state of the offender's departure. The sending state should request reporting instructions and give them to the offender should the receiving state comply. Although the provision of reporting instructions is left to the discretion of the receiving state, this action is encouraged by the PPCAA.

At no time is the receiving state required to provide supervision prior to formal acceptance of the proposed transfer. Supervision responsibilities and liabilities remain with the sending state. Reporting instructions are not to be construed as a transfer of supervision responsibilities or acceptance of the sending state's plan. Granting of reporting instructions by the receiving state is recommend and may facilitate subsequent investigation of the plan, but no attempt at supervision or case management is required prior to the receipt of case material, investigation of the plan, and formal acceptance.

Finally, it is emphasized that it is the responsibility of the sending state to arrange for the removal from the receiving state of any offender who has been allowed to proceed to the receiving state prior to formal acceptance and is later rejected for transfer of supervision.

Section 3-102.
CHANNELING CASES THROUGH THE ADMINISTRATOR'S OFFICE

Acceptance, rejection or termination of an interest in a Compact case shall only occur through the Compact Administrator's office or a designated deputy. All written and verbal communication shall be channeled through the Administrator's office or the office of a designated Deputy.

Commentary

This section clarifies the policy of the Administrators that a single agency in each state handle communications with other states relating to Compact cases.

Section 3-103.
REQUEST FOR SUPERVISION INFORMATION (Revised 9/27/1996)

A request for supervision shall contain a presentence investigation report or similar information from other reports which shall include the following information:

1) Criminal history of the parolee or probationer;

2) Description of the instant offense including information concerning any enhancement or reduction in the charge or penalty;

3) Copy of the conditions of parole or probation with commentary regarding any special conditions which have been imposed is granted. In pre-parole cases, the conditions shall be provided within 30 days after parole to plans in the receiving state;

4) Application for Compact Services and Agreement to Return Form;

5) Copy of the judgment and commitment;

6) Current supervision history of parolee or probationer in the sending state.

Commentary

Given the reality that some states do not have resources available to provide the following material, it is considered desirable, but not mandatory and should be included with the transfer request when it is readily available.

1) Photographs and fingerprints

2) Psychological reports;

3) Information regarding any medical condition which requires medication.

Section 3-104.
PRESENTENCE, PRECONVICTION AND POSTSENTENCE INVESTIGATIONS

Compact Administrators are not required to make presentence, preconviction, or postsentence investigations. (Revised 3/28/2001)

Commentary

Administrators sometimes receive requests for investigations regarding prospective placements of individuals who have not been sentenced. It shall be noted that there is a great difference between making an investigation of an individual who has been convicted, but not yet sentenced, and making an investigation of an individual whose guilt has not been determined. Most Administrators seem to be willing to furnish presentence investigations. This is probably good practice in cases where the investigation will take some time and the court will be required to hold a probationer without a definite supervisory plan until the investigation report is received. The making of an investigation before conviction is another matter. The Association has agreed that Compact Administrators do not have any obligation to make such investigations since the Compact covers only "convicted" persons.

There may be state laws, which prevent an Administrator from making such an investigation even if the Administrator wishes to cooperate. Moreover, a person charged with a crime is presumed to be innocent and retains relevant rights until found guilty, so there may be considerable doubt as to the legality of certain investigations if such individual has not been convicted.

Administrators should try to cooperate by exchanging information to assist other states in presentence, preconviction, and postsentence investigations. It is difficult for states to make proper decisions when background information is unavailable. Administrators who request information should be specific about the type of information wanted. The investigating state shall be given adequate information about such things as addresses of relatives and former employers.

Section 3-105.
CONFIDENTIALITY OF RECORDS

Pre-parole and investigation reports which are exchanged between states in connection with interstate supervision are confidential.

Commentary

Pre-parole and investigation reports shall not be revealed directly or indirectly to any person not authorized to receive them. Administrators shall notify persons in charge of records that they are confidential.

Section 3-106.
DISAGREEMENTS OVER ACCEPTING CASES

No state shall refuse to supervise a parolee or probationer eligible under the Compact who has the necessary employment and residency qualifications. A receiving state cannot reject supervision based on a short period of supervision. Cases with less than 45 days supervision shall not be transferred.

Commentary

Under the terms of the Compact, no state shall refuse to supervise a parolee or probationer who has been convicted and who has the

necessary employment and residency qualifications. No state shall refuse to supervise if the offender is considered to be a poor risk, high profile case, or based upon crime(s). A receiving state cannot reject supervision based on a short period of supervision. Sending states are reminded, however, that receiving states have up to 45 days to investigate prior to acceptance. Therefore, cases with less than 45 days supervision shall not be transferred.

Section 3-107.
DIRECT CORRESPONDENCE WITH PRISONERS

Compact officials shall not engage in direct correspondence with prisoners of another state regarding prospects for interstate supervision.

Commentary

The procedure shall be that when an official receives such a letter, it will be acknowledged but will state that the official cannot act or give information on a case without a request from Compact officials in the sending state. Each state may devise a form letter to use in such cases.

Section 3-108.
ARRANGEMENTS FOR SUPERVISION IN A THIRD STATE

Transfer of supervision to a third-party state shall be processed by the sending state. The current supervising state shall notify the sending state prior to movement for purposes of changing residence. Sending states shall notify receiving states of acceptance of transfer by the third-party state.

Commentary

The state presently supervising the parolee or probationer will assist in having Form III signed if provided by the sending state, issue a travel permit, when properly authorized, with specific information included. This information shall then be sent to the sending state, which will forward such information to the third-party state. The sending state will notify the original receiving state when acceptance is made by the third state and notify it to close the file.

Section 3-109.
RETURN OF SUPERVISION TO THE SENDING STATE
(Effective 3/28/2001)

Prior to an offender being allowed to return to the sending state, the administrator of the sending state shall be notified and reporting instructions shall be requested. This notice shall include the address of residence, phone number, name and relationship of contact person, and date of departure. A travel permit will be furnished to the offender with a copy to the sending state.

Commentary

This rule is intended for offenders with a valid need for return as opposed to those in violation or those who present supervision problems. The sending state is encouraged to provide reporting instructions in an expeditious manner, but failure to do so will not preclude the offender's return. Prior to allowing the offender to return, the receiving state should consider special conditions, victim issues, and other pertinent matters that impact public safety. The travel permit shall include any reporting instructions provided the offender at the time of departure.

Section 3-110.
OBLIGATION TO PROVIDE FOR RETURN

A sending state shall provide for the return of violators supervised under the Compact, including expenses associated with such return, in a reasonable and expeditious manner.

Commentary

Fiscal constraints are not sufficient reason for failure to return violators under the Interstate Compact. It is the duty of the sending state to provide for the return of all offenders supervised under the Compact. Sending states shall provide for the return of violators from receiving states in a reasonable and expeditious manner.

Receiving states shall not be required to bear expenses associated

with a physical return to a sending state, except that no sending state shall be required to compensate a receiving state for expenses associated with the normal incarceration, judicial or administrative process of a receiving state. Additionally, neither the sending or receiving state shall ever send a bill for services to the other state.

Failure to return violators due to fiscal reasons may have liability implications for sending states.

Section 3-111.
RULE VARIANCES

Variances to the rules under this Compact, because of the emergency nature of the circumstances surrounding the need for said variance, may be implemented where clear and convincing evidence can be shown to exist of the need for such variance and where agreed upon in advance by the states affected by such variance. Variances shall be in writing, and should be filed with the Chair of the Executive Council.

Commentary

Variances shall be used when the states involved agree upon the need for the variance. Such cases should usually be extraordinary in nature, and variances agreed upon shall be in writing.

SECTION 400 STANDARDS OF RECIPROCAL SUPERVISION

Section 4-101.
RECIPROCAL DUTIES BETWEEN STATES

Each receiving state shall assume the duties of visitation of and supervision over probationers or parolees of any sending state transferred under the Compact, and in the exercise of those duties will be governed by the same standards which prevail for its own probationers or parolees.

Commentary

The same standard of supervision as applies in the receiving state in the supervision of its own parolees (and probationers) shall apply to out-of-state parolees (and probationers) sent there under the terms of this agreement. The general interpretation of Article (2) of the Compact is subject to no variation. There is unanimous agreement that this language means, in effect, that a receiving state is not expected to do more or less for out-of-state cases than it does for its own cases.

Section 4-102.
INTENSITY AND DURATION OF SUPERVISION

The duration of the parole/probation period in a Compact case shall be determined by the sending state. The degree of supervision shall be determined by the receiving state, but shall be consistent with the degree of supervision applied by the receiving state to its cases not involving the Compact.

Commentary

Some states have parole periods which are much longer than average. Where such periods are fixed by law, it is often impossible for the sending state to discharge a parolee even though the supervision is taking place in a receiving state which does not extend such lengthy supervision to its own parolees. States may place in the lowest level of supervision. Nothing in this section prohibits two states agreeing prior to transfer on the intensity and duration of supervision in a

particular case. In accordance with the clear intent of the Compact, sending states shall therefore determine length of supervision, with receiving states determining the degree of supervision applied. See PPCAA Interpretations: Legal & Administrative Section, Legal Opinion No. 1 Closing Supervision Interest.

Section 4-103.
REPORTING

The receiving state shall provide the sending state with annual progress reports, unless through the mutual consent of the Administrators involved, they are discontinued. Arrival reports shall be sent within 30 days after the offender's arrival in the receiving state.

Commentary

The foregoing rule as it applies to progress reports is not to be construed as preventing two or more signatory states from agreeing among themselves upon either more frequent reporting or less frequent reporting concerning their respective parolees or probationers. Progress reports shall cover present residence of the parolee or probationer, name of the employer, type and character of employment and the individual's general conduct and progress, as well as the individual's attitude toward supervision.

Section 4-104.
COLLECTION OF SUPERVISION FEES

No sending state shall impose a fee for the purpose of supervision on a parolee or probationer who is currently being supervised by another state under the Interstate Compact.

Commentary

It is the position of the Parole and Probation Compact Administrators' Association that only a receiving state shall charge a supervision fee. The reasoning behind this policy is that only the receiving state is performing the actual supervision of the parolee or probationer during this time after the transfer, and therefore only the receiving state can justify a "supervision" fee. Fees assessed by sending states for purposes other than "supervision" are not specifically addressed by this rule. Receiving states shall not charge a supervision fee in Compact cases in excess of the amount which would be imposed if the offender were a parolee or probationer of the receiving state.

Section 4-105.
COLLECTION OF MONEY BY THE SENDING STATE

All money which the sending state desires to collect from parolees or probationers for family support, support of children, restitution, reparation or costs of court or fines, are to be sent directly to the sending state by the parolee or probationer; and the receiving state agrees only to use its best endeavors to see that the individual sends such money as requested.

Commentary

Receiving states have no legal authority to administer the collection of funds on behalf of sending states. In addition, it is the belief of the Compact Administrators that requiring receiving states to collect funds on behalf of sending states would be ineffective and would place unnecessary burdens on receiving states to account for funds belonging to another state.

Section 4-106.
TEMPOR RY/PROVISIONAL TRA EL PERMITS

Although many Interstate Offices regulate travel permits for all parolees and probationers within their state, for PPCAA purposes travel permit policies pertain only to Compact cases.

1) Temporary Travel Permits
A receiving state shall have the discretionary authority to issue to a parolee or probationer a temporary travel permit to make visits out of the receiving state for a period not to exceed thirty (30) days.

2) Provisional Travel Permits
Provisional travel permits may be issued by a sending state to allow a parolee or probationer to proceed to a receiving state prior to completion of an investigation and formal acceptance of the case in emergency situations. See Section 3-101.

Commentary

The Interstate Compact has no authority or involvement in the granting of travel in non-Compact cases. Copies of Provisional Travel Permits are to be included in the investigation request transfer package. Also, copies of Temporary Travel Permits issued in Compact cases are to be provided to the appropriate sending state. Copies of Temporary Travel Permits issued in non-Compact cases will be mailed to states of travel only upon r st of those states.

Section 4-106(1): The receiving state is au ed in appropriate cases to grant to the parolee (probationer) permission to make temporary visits out of the receiving state, not exceeding thirty days in length.

Before a parolee or probationer is given permission t sit in another state, advance notice of visits shall always be sent to the state to be visited if such Administrator of that state has indicated a desire for such notification.

Section 4-106(2): The provisional travel permit is to be used when travel is authorized by a sending state for a parolee or probationer to proceed to a receiving state and there remain pending case transfer. The precautions outlined in Section 3-101 shall be observed by the sending state Administrator before authorizing travel in these cases. If the receiving state rejects supervision of an individual following investigation of the plan, the parolee or probationer must return to the sending state. Provisional travel permits shall contain instructions to the parolee or probationer requiring return to the sending state if transfer of supervision is finally rejected by the receiving state. Travel permits shall be clearly marked as either temporary or provisional permits.

Sending states and receiving states are encouraged to utilize methods of electronic transfer of information to expedite communications in emergency cases.

Section 4-107.
CLOSING OF CASE RECORDS (Effective 3/28/2001)

1) The receiving state shall close its records and cease supervision of the parolees or probationers upon:

   A) Receipt of a certificate of discharge from supervision or upon a receipt of permission to close interest from the sending state.
   B) Notification of absconder status. Such closure shall not jeopardize the sending state's right to retake that individual without extradition. Should said absconder be located within the receiving state, the provisions of these rules and the Compact requiring the receiving state to hold a preliminary hearing shall still apply.
   C) Notification of institutionalization (per 4-109) or imprisonment.
   D) Notification of death.
   E) Return to sending state (per 3-109).

2) No receiving state shall close its records on a violator while the sending state is in the process of retaking the parolee or probationer.

Commentary

It has been established by various court decisions that even when the receiving state has closed its records on an absconder such closure does not jeopardize the right of the sending state to retake him/her without extradition.

A Certificate of Death will be provided if requested by the sending state.

A case shall not be closed on a violator while the sending state is in the process of retaking. The case shall be closed after the offender is removed from the receiving state or when the violator begins to serve a new sentence in the sending state. As a ge l principal receiving states shall treat Compact cases as they wo eat their own state's non-Compact cases. (Effective 3/28/2001)

Section 4-108.
DISCHARGE IN RECEIVING STATE

The sending state shall notify the receiving state's Compact Administrator of a parolee or probationer's discharge from supervision.

Commentary

Notices of discharge shall always be sent to the receiving state's Administrator, so that they will not be in the position of supervising an individual who is no longer on probation or parole. The receiving state's authority to supervise springs from the fact that it is acting as "agent" for the sending state. Therefore, the receiving state shall not continue supervision when there has been a discharge.

It is noted that some states discharge supervisees despite the fact that the receiving state has called attention to the need for continued supervision. The sending state has a legal right to make the final decision regarding discharge; however, it also was agreed that there shall be cooperation in these matters.

Section 4-109.
SUPERVISION OF INDIVIDUALS WHO BECOME MENTALLY ILL OR PHYSICALLY HANDICAPPED WHILE IN THE RECEIVING STATE

A receiving state shall continue supervision of an offender who is determined to be mentally ill or physically handicapped while in the receiving state, unless the prognosis for recovery is diagnosed as long term or of a permanent nature, where the supervision of long-term commitments reverts back to the sending state.

Commentary

It must be remembered in setting supervision rules for the mentally ill or physically handicapped offender, that most such cases are committed for short terms or usually after being charged with a new offense in the receiving state. Closing and resuming Compact supervision on these short commitments would place a needless administrative burden on both the receiving and sending states.

Section 4-110.
INTERPRETATION AND PRACTICES REGARDING VIOLATORS

1) **Reports of Violations**
A receiving state shall promptly, upon violation, notify the sending state of such violation utilizing the appropriate forms provided for by these rules.

2) **Crimes Against the Laws of the Receiving State**
A receiving state may detain a parolee or probationer who has committed a crime against the laws of the receiving state and hold a trial on that offense.

3) **Detainers Placed by the Sending State**
The following are procedures regarding detainers placed by the sending state against interstate supervisees incarcerated in the receiving state:

A) A preliminary hearing shall be conducted as soon as possible by the receiving state and forwarded to the sending state if requested, except where a waiver admitting the fact of the violation has been executed.

B) The receiving state shall send full information to the sending state regarding such things as the nature of the crime and the length of the new sentence.

C) The sending state shall, when filing a detainer, send a letter to accompany the detainer to the receiving state expressing the wishes of the sending state when the individual is released from prison in the receiving state.

4) **Detainers Placed by a Receiving State**
Where allowed by the law of the receiving state, detainers or Compact warrants may be placed by a receiving state upon a violator under the Compact pending a warrant or revocation by the sending state.

5) **Requests for Preliminary Hearings**
All requests by sending states that a receiving state hold a preliminary hearing on a violation shall be honored, except where a waiver admitting the fact of the violation has been executed (unless waivers are prohibited by the sending state).

6) **Bail**
No interstate supervisee who has been arrested in the receiving state shall be admitted to bail while the sending state is in the process of returning the supervisee.

Commentary

Section 4-110(1): Section 5 of the Parole and Probation Rules and Regulations specifies that the receiving state shall "promptly upon violation notify the sending state." An Administrator must give due credit to the recommendations of individual field officers, but should screen notices of violation rather carefully to be sure that there is good and sufficient reason for asking the sending state to retake its parolee or probationer.

The term "revocation of parole" has different meanings under various state laws. When corresponding about violations with the receiving state, it may be well to substitute other terms, such as "delinquency status" or "suspension of parole."

Section 4-110(2): If a violator has committed a crime against the laws of the receiving state, that violator may, of course, be held and tried on new charges. This is in accordance with Article 3 of the Compact which states, if at the time when a state seeks to retake a probationer or parolee there should be pending against him within the receiving state any criminal charge, or that suspicion exists of having committed within such state a criminal offense, he shall not be retaken without the consent of the receiving state until discharge from prosecution or from imprisonment for such offense."

Sending states clearly have a legal and contractual obligation under the Compact to return an individual where requested, just as receiving states have the related responsibility not to violate in Compact cases more readily than they do in their own cases. The length of a new sentence in the receiving state has no bearing on the sending state's

right to retake an individual once the sentence has been served.

Section 4-110(3): Subsection (B): The receiving state shall confront all available adverse witnesses at the preliminary hearing where the violation is technical or based on untried complaints. In the case of a new conviction, the receiving state shall send certified minutes of the conviction.

The receiving state shall authenticate any other materials including the violation report and summary of the preliminary (on site) hearing if required by the sending state.

Section 4-110(4): When an interstate supervisee has been arrested in the receiving state, such supervisee shall not be admitted to bail while the sending state is in the process of making the return. The Morrissey decision and subsequent court decisions are predicated upon the assumption that the preliminary hearing determines the existence of reason to hold the individual, therefore eliminating the basis for allowance of bail. There shall be a special effort made to advise police, prosecutors and judges of the existence of the sending state's violation warrant.

Section 4-111.
FACTORS INVOLVED IN THE MAKING OF A DECISION TO RETAKE A CASE

1) **Obligation to Retake a Violator**
A receiving state shall consider a parolee or probationer's residence and family ties before asking a sending state to retake a violator, particularly when the violator has only a few months left to serve for the sending state and is under a new sentence in the receiving state.

2) **Alternatives to Retaking Out-of-State Cases**
There are two alternatives to retaking out-of-state cases:

A) In the case of a violator who has committed a crime in the receiving state it may be possible to arrange concurrent supervision.

B) Any violator may be committed by the sending state to an institution of the receiving state if both states are signatory to the Out-of-State Incarceration Amendment.

3) **Continuation of Supervision when the Sending State Refuses to Retake a Violator**
A sending state shall apply the same standard for retaking of parolees or probationers as is applied to the taking custody of parolees or probationers within the sending state. The decision of the sending state to retake a person on parole or probation shall be conclusive and non-reviewable within the receiving state.

Commentary

Section 4-111(1): The receiving state shall try to give due consideration to residence and family ties before asking a sending state to retake a violator, particularly when the violator has only a few months left to serve for the sending state and is under a new sentence in the receiving state. The Association has adopted the following:

"That this Association go on record as favoring the

> continuance of the practice regarding return principles that has been followed over the years, namely that when a receiving state requests return, the request be honored unless another plan satisfactory to both states can be found."

In special situations the receiving state may feel compelled to ask the sending state to retake a parolee or probationer, even though the violations are relatively minor. It is suggested that in these cases the receiving state explain fully the pressures and special problems which make the continuance of supervision infeasible.

Section 4-111 (3): Article 3 requires that " [t] he decision of the sending state to retake a person on probation or parole shall be conclusive upon and not reviewable within the receiving state." See PPCAA Executive Council Rulings Section. Ruling No. 4 -Sending State's Refusal to Order Return of an Offender.

> The sending state shall reply to any violation report with either a decision or status report within 30 days of its receipt.

Section 4-112.
FORMS

The forms in reference to (1) Investigation Request; (2) Information When Subject is Sent to Receiving State; (3) Application for Compact Services and Agreement to Return; (4) Progress and Conduct Report; (5) Violation Report; and (6) Report of Arrival, are found in Chapter 4 and made part of these rules and regulations and are to be used for the purpose indicated. The Reply to Investigation Request Form, also found in Chapter 4, is optional.

Commentary

The objective in using standardized forms is to provide a degree of uniformity in the type and quality of information transmitted between states. Although there may be some minor differences in the format of forms used by the various states, every effort should be made to conform to the requirements of the rule regarding the use of forms. This is especially true where use of the Application for Compact Services and Agreement to Return is concerned as the language used

in this form must conform in every respect with the language adopted by the Administrators.

SECTION 500 RETAKING CASES FROM ANOTHER JURISDICTION

Section 5-101.
GENERAL LEGAL ASPECTS

A duly accredited officer of a sending state may at any time enter a receiving state and apprehend and retake any person on probation or parole after due process.

Commentary

Article 3 of the Compact was reinterpreted by the Supreme Court (1972 & 1973) in *Morrissey v. Brewer* and *Gagnon v. Scarpelli.* The Court expanded certain limited due process rights to parole and probation offenders prior to the return of the alleged violator to the receiving state. A preliminary probable cause hearing is required prior to return.

At the time of application for Compact services, a waiver of extradition is executed. All legal requirements to obtain extradition of fugitives from justice are hereby expressly waived on the part of states party hereto, as to such persons. Some states require an identity hearing prior to return of the alleged violator to the sending state.

Article 3 also prohibits the removal of an alleged violator from the receiving state if: 1) there remains pending within the state any criminal charges, 2) if the alleged violator is suspected of having committed any criminal offenses, 3) unless, the receiving state grants consent to remove the violator prior to discharge from prosecution or from imprisonment for such offense.

Section 5-102.
PROBABLE CAUSE HEARINGS

Morrissey v. Brewer and *Gagnon v. Scarpelli* mandate the holding of preliminary probable cause hearings in the receiving state prior to returning an alleged violator to the sending state.

Commentary

In the early 1970's the U.S. Supreme Court held in *Morrissey v. Brewer* and *Gagnon v. Scarpelli* that alleged parole and probation violators must be afforded limited due process rights upon arrest and confinement in the receiving state. The court held that an informal hearing is mandated to give assurance that the finding of parole or probation violation is based on verifiable facts and that a reasonably prompt inquiry is made by an impartial hearing officer near the place of alleged violation. The hearing is held to determine whether probable cause exists to believe that a parole or probation condition has been violated.

Section 5-103.
WAIVER OF PROBABLE CAUSE HEARINGS

Waiver of probable cause hearings by a parolee or probationer under the Compact against whom revocation proceedings have begun shall not be accepted unless said waiver shall also include an admission of violation of probation or parole, knowingly signed by the parolee or probationer unless such waivers are prohibited by the sending state.

Commentary

Historically, practices differ among states as to the conditions of and acceptability of waivers of probable cause hearings. Problems have occurred in substantiating parole/probation violations in the receiving state based upon waivers which do not include an admission of violation. To prevent the loss of violation action by the sending state, all waivers of probable cause hearings shall include a signed admission of violation by the parolee or probationer.

Section 5-104.
ON-SITE PROBABLE CAUSE HEARINGS

1) Parole or probation revocation actions against individuals transferred under the Interstate Compact shall include a preliminary probable cause hearing conducted in the receiving state when at the time of initiation of revocation the parolee or probationer was physically within a receiving state pursuant to transfer under the Compact.

2) Preliminary probable cause hearings shall be conducted in a timely and reasonable manner and may be held by courts of appropriate jurisdiction or by administrative officials who are neutral and detached from the specific proceedings as otherwise allowed by law.

3) Preliminary probable cause hearings shall be subject to the procedures of the receiving state where not in conflict with the Compact.

4) Any evidence acceptable in a preliminary probable cause hearing shall be sufficient when transferred to a sending state as part of the official record of the preliminary probable cause hearing for acceptance as evidence for consideration in a final revocation hearing in the sending state, notwithstanding that it may be otherwise insufficient or objectionable in the form in which it is transferred. See Probable Cause Hearing Information Form.

Commentary

The Adult Compact clearly mandates that policies and practices in the tre ent of Compact offenders are to be governed by the receiving sta. Therefore, to maintain uniformity in the administration of interstate preliminary probable cause hearings, the policies, procedures and practices of the receiving state shall prevail. Conflicts between states on the acceptability/admissibility of evidence are resolved through the execution of the Probable Cause Hearing Information Form signed by the parole or probation offender at the time of application for Compact services.

Section 5-105.
WAIVER OF EXTRADITION

No transfer shall occur under the Compact without a duly executed waiver of extradition signed by the parolee/probationer.

Commentary

1) Article (3) of the Compact greatly simplifies the procedure for interstate rendition of parolees and probationers. It means that the signatory states have agreed that extradition proceedings shall not be required when a sending state wishes to retake its parolee or probationer.

This agreement between the states is buttressed by an agreement signed by the parolee or probationer leaving the sending state for supervision in the receiving state. By signing this agreement (Form III of the Parole and Probation Forms - "Application for Compact Services and Agreement to Return") the offender waives any right to extradition proceedings in return for the privilege of interstate supervision and agrees to make no contest of "any effort by any state" to force return to the sending state upon demand.

Thus the states, with the consent of Congress, have expressly waived all of their legal requirements to obtain extradition of fugitives under the Compact - and the individual parolees or probationers have agreed - in advance and as a specific condition of their transfer - to waive their right to contest the effort of any state to return them to the sending state. The right of states to retake Compact cases without extradition has been challenged in court many times, but no court of last resort has ever handed down an unfavorable decision to the Compact.

2) The courts in recent years have ruled that if a parolee or probationer has signed a waiver of extradition as part of the agreement, extradition is not necessary. There are numerous relevant court cases (not one court of higher jurisdiction has ever ruled against this method of return). Quite to the contrary, the courts of higher jurisdiction, the U.S. 5th, 7th and 8th Circuits have ruled that a pre-signed waiver (without a Compact transfer) can be used and denied civil judgment against officials involved under USC Section 42, 1983. The courts have also ruled that:

   (A) Prior waiver of extradition as a condition of parole is not an unreasonable or coerced condition. See *Pierson v. Grant,* 527 F.2d 161 (8th Cir.1975).

(B) Prior waiver is enforceable if the offender had a "general knowledge and understanding" of the waiver. See *Forester v. California Adult Authority*, 510 F.2d 58 (8th Cir.1975).

(C) Extradition is not an exclusive remedy. See *Cook v. Kern*, 330 F. 003 (5th Cir.1964).

(D) It need only to establish identity of the offender and the authority of the retaking officer.

See Simmons on behalf of *Gra-V v. Lohman*, 228 E2d 824 (7th Cir.).

See PPCAA Executive Council Rulings Section, Ruling No. 5 - Re i to Honor Waiver of Extradition.

Section 5-106.
THI D PARTY STATE RETURN OF PAROLE/PROBATION VI(ATORS

When a parolee or probationer executes the Application for Compact Services and Agreement to Return Form (Form III) the individual also waives the right to extradition from any jurisdiction where such person may be found.

Commentary

There has been no difficulty experienced by probation or parole agencies in effecting the return of violators who are apprehended in the receiving state, particularly where the probationer or parolee has signed the Compact Form III. The courts have uniformly upheld the right of the state to retake in this situation without extradition and no reported case has been found to the contrary. The great weight of authority so holds that a parolee or probationer who has been released to supervision under the Compact in another state and absconds to a third party state may also be returned without formality of extradition proceedings. There are several court decisions upholding the return of an alleged violator from any other state under a pre-signed waiver. The courts have ruled that:

1. Prior waiver of extradition as a condition of parole is not an unreasonable or coerced condition;

2. Prior waiver is enforceable if the offender had "general knowledge and understanding" of the waiver;

3. Extradition is not an exclusive remedy;

4. There is need only to establish identity of the offender and the authority of the retaking officer.

Section 5-107.
RIGHT OF PAROLEES AND PROBATIONERS TO LEGAL PROCEEDINGS

No parolee or probationer under the Compact shall be denied the right to appeal to a court for the protection of individual rights.

Commentary

Parolees and probationers have sometimes made the claim that the Compact procedure for securing the return of interstate cases is in violation of the Fourteenth Amendment because it deprives them of liberty without due process of the law. This claim has always been rejected.

The following excerpt taken from the *Niederer v. Caty*, 240 N.W.2d 626 (Wis. 1976) case indicates the line of reasoning generally followed by the courts, in upholding the Compact's waiver provisions, "because a parolee is deprived of no federally protected right, constitutional or statutory, in not being afforded an extradition proceeding, there is no due process violation."

The Compact does not and cannot deny to a parolee or probationer the right to appeal to a court for the protection of individual rights. However, the rights of a parolee or probationer are not unlimited and must be balanced against the rights of society. Article 3 of the Interstate Compact under which supervision occurs states, "the decision of the sending state to retake a person on probation or parole shall be conclusive upon and not reviewable within the receiving

state." Therefore, certain claims of violation of individual rights must be decided by the courts of the sending state rather than the courts of the receiving state.

The following is a summary of interpretations regarding the jurisdiction of courts of sending and receiving states over claims made by parolees and probationers:

(1) If the parolee or probationer claims to be the wrong person when the sending state attempts to retake the individual: by the very terms of the Compact the individual can apply in the asylum (receiving) state where the individual is found for a writ of habeas corpus to test "the identity of the person to be retaken."

(2) If the parolee or probationer claims that the officer sent to retake is not the duly accredited officer of the sending state: by the terms of the Compact, application can be made in the asylum (receiving) state for a writ of habeas corpus to test "the authority of the officer."

(3) If the parolee or probationer claims that conviction by the sending state was unjust or that the sentence received was disproportionate: the remedy is to appeal to the courts of the demanding (sending) state. There is no right to test innocence or guilt on habeas corpus in the receiving state.

(4) If the parolee or probationer claims that the sentence has already been served in full: the individual must appeal to a court of the sending state for a decision as to that person's status under the laws of the sending state.

(5) If the parolee or probationer claims that the violation for which retaking is underway is not serious enough to warrant return to the sending state: the court of the receiving state is relieved of jurisdiction by the express terms of the Compact which states, "the decision of the sending state to retake a person on probation or parole shall be conclusive upon and not reviewable within the receiving state."

(6) If the parolee or probationer contests the legality of the revocation: this is a question for the demanding (sending) state.

Section 5-108.
TRANSPORTATION OF CASES THROUGH OTHER STATES BY AGENTS OF THE SENDING STATE

Persons who are duly accredited officers of the sending state under this Compact, shall be permitted to transport prisoners through any and all states party to this Compact without interference.

Commentary

Article (4) of the Compact states that "only duly accredited officers of the sending state will be permitted to transport prisoners being retaken through any and all states parties to this Compact, without interference."

States may authorize appropriate officials within public or private agencies as official agent of the sending state for purposes of transporting offenders. Nothing in the Compact precludes a state from contracting with private transportation vendors for purpose(s) of transporting offenders across state boundaries.

Section 5-109.
RETAKING OFFENDERS DIRECTLY FROM STATE/FEDERAL CORRECTIONAL FACILITIES

Duly accredited agents of the sending state may assume custody directly from state/federal facilities provided that: 1) no detainer has been placed by the state in which the institution lies; 2) no extradition proceeding initiated by a 3rd state is pending; 3) that no identity hearing is required by the laws of the state in which the offender is incarcerated.

Commentary

Article 3 of the Compact provides for the waiving of extradition rights at the time of application. Unless local charges are pending or

unless another party state has initiated extradition proceedings, custody may be directly assumed by the sending state's agents at the pla e of confinements. In addition, some states require that an id ty hearing be held in the state of confinement to establish the ide ity of the offender and of the sending state's agents.

SECTION 600 SUGGESTED RULES OF PRACTICE UNDER THE INTERSTATE REVOCATIONS HEARINGS AMENDMENT

NOTE: Section 600 contains recommended policies and general provisions for the implementation of interstate revocation hearings between signatory states. The contents of any sub-section contained herein is subject to the approval of the duly appointed Compact Administrators and/or designates representing the signatory states party to this amendment.

Section 6-101.
GENERAL LEGAL PROVISIONS

The service of administering interstate revocation hearings on a reciprocal basis is not a service provided for under any provision of the basic Compact. However, where Compact amendment exists and where a written contractual agreement exists between signatory jurisdictions, states may provide interstate revocation hearings pursuant to law and contractual arrangement. See recommended contract "Contract for Services Between (receiving state) and (sending state) for the implementation of the Revocation Hearings Amendment."

Commentary

When the Compact was effectuated in 1937, no provisions were made for authorities of signatory states to hold final revocation hearings for one another. While the Incarceration Amendment to the Compact (late 1960's) recognized and provided for interstate revocation hearings between signatory jurisdictions, its primary intent was to reincarcerate violators in the receiving sate. As a result, the Incarceration Amendment's applicability to modern field and correctional systems was questionable.

The Interstate Revocation Hearings Amendment provides the legal basis to permit signatory states to hold final revocation hearings for one another, reciprocally. The amendment legally assigns agent status to the receiving state's officials in the holding of final revocation hearings pursuant to this amendment. There are two separate Compact amendments governing interstate revocation

hearings - one statute governs parole revocation hearings and the other statute governs probation revocation hearings. States may opt to pass one or both amendments. In addition to the passage of the Compact amendment(s), signatory states shall enter into written contractual agreements. Said agreements shall provide the basis of how the states' staff conduct business between one another; what offender groups shall be eligible for services; and, which states' applicable laws and regulations shall prevail and govern the administration of final revocation hearings. Nothing in the amendments(s) or contained in any contractual agreement shall abrogate or revoke the sending states authority to review and approve a final revocation hearing recommendation made by the authorities of the receiving state.

Section 6-102.
ELIGIBILITY

Signatory states shall negotiate and agree via written contract as to the scope of offender eligibility.

Commentary

The U.S. Supreme Court clearly established that speedy trial rights do not apply to outstanding parole and probation violation detainers when an alleged parole or probation violator is serving an out of state term of imprisonment. *Nash v. Carchman* 473 U.S. 716, 105 S. Ct. 3401 (1985). Given the above holding, interstate Administrators may at their discretion decide on which offender groups may best be served by the hearing process provided for under the Interstate Revocation Hearings Amendment. It is strongly recommended that officials entering into contracts under this amendment clearly define the offender groups to be served.

Section 6-103.
AGREEMENT OF WAIVER - COMPACT OFFENDER

In order to partake in services provided under the Compact between states party to the Interstate Revocations Hearings Amendment, the parolee and/or probationer shall execute Form II, "Agreement of Waiver, Revocation Hearings Amendment" in conjunction with "The Application for Compact Services and Agreement to Return" form.

All documents shall be contained in the original transfer package compiled at the time of application for transfer.

Commentary

Compact services provide certain benefits to the offender group. In consideration of obtaining certain benefits derived from interstate transfer, the offender(s) must waive their rights to formal extradition and must realize and accept certain differences in the administration of parole/probation supervision between states. Where two states have adopted the Interstate Hearings Amendment and have entered into contractual arrangements under the amendment, the offender shall also acknowledge and agree to any differences in the administration of final revocation hearings between sending and receiving states. In addition, the offender must waive any right to a face-to-face revocation hearing in the sending state, and must waive any challenge to the type and character of information reports and documents presented and/or used in consideration against the offender during the final revocation process.

Section 6-104.
AGREEMENT OF WAIVER - NON-COMPACT OFFENDER

In order to partake in services provided under the Final Revocation Hearings Amendment and to obtain benefits derived there from, non-Compact offenders deemed eligible for revocation hearing by contractual agreement, shall effectuate Form IV- "Agreement of Waiver, Non-Compact Case"; Form IV shall be executed prior to the scheduling of any final revocation hearing within the receiving states. The offender must voluntarily execute a Form IV.

Commentary

Form IVs are only executed by non-Compact offenders who voluntarily request that a receiving state hold a final revocation hearing. Non-Compact offenders are only eligible for interstate revocation hearings under this Amendment(s) when signatory states agree to the eligibility of non-Compact offenders via formal contractual provision.

Section 6-105.
STANDARDS OF EVIDENCE

The type and character of information, reports and documents presented and/or entered into evidence to substantiate or dispel violation allegations brought against an offender under this amendment shall be accepted as legitimate standards of evidence by officials of the sending state provided that such documents are acceptable standards of evidence for revocation proceedings within the receiving state.

Commentary

The rule ensures that evidence presented and accepted at a final revocation proceeding in the receiving state be transferable as legitimate evidence when considered by the sending state.

NEW MEXICO CORRECTIONS DEPARTMENT

Gary E. Johnson, Governor

Robert J. Perry, Cabinet Secretary
John H. Shanks, Deputy Secretary
Dona Wilpott, Deputy Secretary
Mark Radosevich, Director

Probation & Parole
Division
Interstate Compact Unit
PO Box 27116
Santa Fe, NM 87502

October 30, 2001

Ms. Cheri Smith
NMCD# 52941
348 West Chandler
Boulevard Chandler, AZ
85225

Dear Ms. Smith:

As per our previous phone conversations, the following is clarification on whet happened with your probation case materials.

The Interstate Compact Office received your parole case materials on November 28, 2000. Arizona Interstate Compact accepted the case for parole on January 10, 2001. You paroled directly to Arizona on February 7, 2001. At this point in time the Institution you were released from (NMWCF) should have notified the Probation Office in Farmington, New Mexico you were released on parole. This did not occur. On February 8, 2001, Mr. Arlin Chester, your parole officer

in Arizona requested information regarding' your court ordered restitution payments. This request for information was filed and was not acted upon by the Interstate Compact Office. On October 5, 2001 you contacted my office. You stated that your parole officer had sent the above referenced correspondence and he had not received an answer. As I explained to you I found the request in your file and could not explain as to why it had not been acted upon by the Interstate Compact Administrator at that time. After reading through your file and discovering you had probation in addition to your parole, I contacted the Farmington Probation & Parole Office to find out who your probation officer was. I was informed that your probation officer was Linda Standerwick. I spoke to Ms. Standerwick and informed her that you were inquiring as to your restitution payments. She stated she had spoken to your parole officer in Arizona but she had not submitted any case materials for the probation supervision. I informed her that I would contact You and tell you to get a hold of her. **She also informed me that the Assistant District Attorney in Farmington had filed a petition to revoke your probation. Ms. Standerwick stated she had nothing to do with the petition and that the ADA had initiated this action.** It was at this point in time I called you and told you to contact Ms. Standerwick. After you spoke to Ms. Standerwick you called me and informed me what you had discussed. You asked me to contact Ms. Sandra Price, ADA in San Juan County. I did so at your request. I informed Ms. Price as to what had occurred with your probation and the miscommunication between the Probation Office, the Parole Office, and Interstate Compact. Ms. Price informed me that she was not seeking revocation of your probation that she wanted clarification and a promissory note signed as to your restitution. I then contacted you and informed you as to Ms. Price's and my discussion. I then contacted Ms. Standerwick and ask her to submit case materials for your probation case.

I hope this information assists you.

Sincerely,

Celeste V. Casias
Deputy Interstate Compact Administrator

State of New Jersey
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DIVISION OF LAW
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IA S E. McGREEVEY
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Director

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July 9, 2002

Douglas Chiesa, Executive Assistant
New Jersey State Parole Board
P.O. Box 862
Trenton, New Jersey 08625

Re: #02-110 - Whether a family member's letter of support is sufficient for a mandatory acceptance case under the Uniform Act for Out-of-State Parolee Supervision, N.J.S.A, 2A;168-14 et. sea,

Dear Mr. Chiesa:

You have requested advice concerning whether a family

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member's letter of support constitutes a visible means of support for an out-of-state parolee requesting to have supervision transferred to New Jersey thereby making the parolee's case a mandatory acceptance case under the Uniform Act for Out-of-State Parolee Supervision, N.J.S.A., 2A:168-14 et. seq. For the reasons set forth below, the Parole Board cannot refuse an offender who has family in this state and who has a letter of support from his wife.

By way of background, on March 12, 2001, a parolee from Louisiana requested to transfer his parole supervision to New Jersey pursuant to the Interstate Compact for the Supervision of Parolee and Probationers ("Compact"). As part of his application, the parolee submitted a letter from his wife who is a New Jersey resident, which indicates that she will financially support her husband. The Parole Board has denied acceptance of this case for supervision due to the belief that the parolee's wife's letter of support does not constitute a "visible means of support" pursuant to the Compact. On July 30, 2001, New Jersey rejected the parolee's transfer request on the basis of no employment. Louisiana resubmitted the transfer request and New Jersey again denied the transfer request on August 28, 2001 due to an absence of an employment plan and requested a psychological evaluation. On September 4, 2001, Louisiana submitted a third transfer request and New Jersey did not respond. The Parole Board's position is that the letter of support does not represent a reliable form of support such as social security or other governmental subsidies, because the wife's support is subject to change.

On March 5, 2002, Louisiana filed a grievance with the Executive Council of the Parole and Probation's Compact Administrator's Association ("PPCAA") against New Jersey for the failure to accept the parolee's case. The Parole Hoard declined to accept the case based on the parolee not having employment or a visible means of support and the failure to

provide a psychological evaluation. On March 26, 2002, the Executive Council of PPCAA rendered an informal opinion.

> it appears the State of New Jersey has denied this investigation request due to lack of employment and no psychological evaluation. R 20191, states, '[t]he offender shall have an offer of employment or a visible means of support.' The plan from Louisiana indicated that the offender would be loving (sic] with his wife and provided a letter from the wife indicating support as well (as] a recent W-2 form. Rule 3-106 states, (n No state shall refuse to supervise a parolee or a probationer under the Compact who has the necessary employment and residency qualifications. A marriage certificate and letter of support with documentation demonstrates the qualifications have been met, The rejections from New Jersey dated 8/28/01, and 9/10/01, indicate one reason for denial as failure to provide a psychological evaluation. R 3-103, clearly lists the required documents for an investigation request. Psychological evaluations are desirable, but not mandatory. Investigations cannot be withheld, delayed, rejected, or returned to this information not being available.
>
> It is the recommendation of the Executive Council Chair, that the State of New Jersey immediately reinvestigate this case and accept this plan for supervision if it meets mandatory requirements set by the PPCAA.

The Executive Council of the PPCAA rendered a decision on May 2, 2002 finding New Jersey in violation of Rule 3-103 and Rule 3-106 of the PPCAA. The Executive Council

directed New Jersey to

> 1. Reinvestigate the request concerning Mr. May immediately to determine if he meets requirements for su· ·rvision. If he has family and a means of sup; the case must be accepted as a mandatory case.
> 2 Cease the rejection of any case based on a psychological evaluation not being available. If the State of New Jersey feels a psychological evaluation is needed the offender can be ordered to complete one at their expenses upon arrival to New Jersey.
> 3. Complete all investigations in accordance with the time frame set out in Rule 3101.
> 4. The Council request an acknowledgment of you[r] intent to comply with the ruling no later that 5/30/02. It is further requested that you supply the Council with a plan of corrective action by 6/15/02.

N.J.S.A. 2A:168-14 (1) authorizes New Jersey's participation in the Uniform Act for Out-of-Stare Parolee Supervision and provides in pertinent part that the contracting states agree,

> to permit any person convicted of an offense within such state ('sending state')and placed on probation or released on parole to reside in any other state ('receiving state') if,
>
> a. such person is in fact a resident of or has his family residing within the receiving state and can obtain employment.

The statute further permits the receiving state to investigate the home and prospective employment of the applicant.

N.J.S.A., 2A:16B 14. A receiving state can also consent to accepting a parolee from another state who does not have family residing in the receiving state. N.J.S. 2A:168-14. In accepting the terms of the Compact states also accept the terms of the PPCAA manual, which explains the application of the Compact.

The comments for Section 2-101 of the PPCAA manual note that the PPCAA has refused to adopt proposals for a rigid interpretation of the Compact's language regarding residence, family and employment. In addition, the PPCAA provides that individual states that have laws requiring parolees to have jobs before leaving prison should not be applicable to persons from the sending states. Therefore, New Jersey cannot require an offender to be employed prior to entering the State. The offender need only provide an offer of employment, or a mere promise. The ability of the offender to support himself during the parole period is essential. However, the comments to Section 2-101 imply that an actual offer of employment is not necessary rather only a visible means of support is required.

In cases where the receiving and sending states disagree over acceptance of an offender, Section 3-106, provides,

> [no state shall refuse to supervise a parolee or probationer eligible under the Compact who has the necessary employment and residency qualifications.

The comments to Section 3-106 also state that a receiving state cannot refuse to accept an offender who is considered a poor parole risk, high profile case or based on the crime's). Moreover, the Parole Board is bound by the decision of the Executive Council by virtue of its membership in the Compact.

In this case, the offender has submitted a letter from his wife, who is a resident of New Jersey, indicating that she

can financially support her husband. The Parole Hoard's position that the letter of support is not reliable because the wife's situation is subject to change, is not legally supportable. There is no "subject to change" exceptions indeed, even an offer of employment is subject to change.

New Jersey also requested a current psychological evaluation. Comments to Section 3- 13 provide that in considering the resources of son states, providing psychological evaluations and/or medical information, is desirable but not mandatory. Therefore, New Jersey cannot refuse to accept an offender because the sending state has not provided it with a psychological evaluation and/or medical information.

As a state that has adopted the Compact, New Jersey has agreed to comply with the terms of the PPCAA. The Compact itself provides that it is to be interpreted in a broad and general way so as to facilitate the goal of the Compact which is to aid in the rehabilitation of the offender. While a letter of support and documentation does not offer the same level of stability as a government subsidy, it is sufficient to satisfy the requirements of the Compact. An offender who meets the requirements of N.J.S.A. 2A:168-14 presents a case of mandatory acceptance and New Jersey does not have the discretion to deny acceptance, based on the evidence set forth in this case.

Sincerely yours,

DAVID SAMSON
ATTORNEY GENERAL OF
NEW JERSEY

By: _____
Tamara L. Rudow
Deputy Attorney General

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cc: Lewis Scheindlin, Deputy Attorney General
Gregory A. Spellmeyer, Deputy Attorney General
Victoia L. Kuhn, Deputy Attorney General

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JOHN DOE,

Plaintiff,

V Civil Action No. 98-1746

WILLIAM F. WARD, in his official capacity as the Chairman of the Pennsylvania Board of Probation and Parole; and JEFFERY MILLER, in his official capacity as the Commissioner of the Pennsylvania State Police,

Defendants.

MEMORANDUM OPINION

CINDRICH, District Judge

September 18, 2000

This action arises from the application of the Pennsylvania Registration of Sexual Offenders Act, popularly known as "Megan's Law," 42 Pa. Cons. Stat. Sections 97919799.6 (also referred to herein as the "Original Act"), amended by S.B. No. 380, 184th Reg. Sess., Act No. 2000-18, 2000 Pa. Legis. Service. No. 2 at pp. 53-68 (referred to generally herein as the "Amended Act")[1], to plaintiff

[1] Specific citation to the Amended Act appear herein as "Act No. 2000-18 Section (Pennsylvania Consolidated Statutes

John Doe ("Doe").[2] Doe filed the instant complaint seeking preliminary and permanent injunctive relief in connection with the defendants' application of the Original Act to him to the extent that he has been subjected to community notification for an out-of-state conviction. Doe asserts the following claims in his complaint:

Count One: violation of right to travel, as guaranteed by the Equal Protection Clause of the Fourteenth Amendment and the Privileges and Immunities Clause of Article IV, Section 2 of the United States Constitution;

Count Two: deprivation of liberty and property interests without procedural due process in violation of the Fourteenth Amendment to the United States Constitution;

Count Three: punishment in violation of the Ex Post Facto Clause of Article I, Section 9, Clause 3 of the United States Constitution; and

Count Four: violation of right to travel, as guaranteed by the Privileges and Immunities Clause of the Fourteenth Amendment to the United States Constitution.

Simultaneous with the filing of the complaint, Doe also filed a motion for a temporary restraining order and/or a preliminary injunction. The parties later entered into an agreement which

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(section number as it appears in Act No. 2000-18)".

[2] John Doe is a pseudonym being :d to protect the plaintiff's

resolved this motion for immediate relief and thereafter indicated to the court that there were no genuine disputes of material fact and that the remaining issues could be decided on cross-motions for summary judgment. Pending before the court are the parties' cross-motions for summary judgment.

I. Background

A. Pennsylvania's Megan's Law

The Original Act was signed into law on October 24, 1995. In general, the Original Act required (1) registration with the Pennsylvania State Police (the "State Police") by individuals convicted of certain predicate offenses enumerated in the Act and (2) community notification for such offenders who were later deemed to be a "sexually violent predator" as defined in the Act. The community notification provisions of the Original Act had an effective date of April 22, 1996. An amendment to the Original Act was passed on May 22, 1996, effective immediately, which added Section 9793(d) and substantially revised Section 9795(c), the two provisions which are the primary subject of Doe's complaint as they

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identity.

both deal with out-of-state offenders.

Subsequent to Doe's filing of the complaint, the Pennsylvania Supreme Court ruled in Commonwealth v. Williams, 733 A.2d 593 (Pa. 1999) that the provisions of the Original Act which related to the designation of sexually violent predators were unconstitutional. In an apparent response to the Williams decision, the Pennsylvania legislature passed the Amended Act, which was signed into law by the governor on May 10, 2000 and took effect within sixty days of that date.

Although the out-of-state offender provisions previously codified at Sections 9793(d) and 9795(c) were substantially changed in the Amended Act, Doe's counsel argued in a letter to the court dated May 10, 2000 that the constitutional infirmities alleged in the complaint had not been cured by the Amended Act.[3] Still, the court deemed it necessary to give the parties an opportunity to submit supplemental briefs to address any issues that may have arisen as a result of the intervening legislation. Doe filed a supplemental brief

[3] The May 10, 2000 letter has been docketed (see Doc. No. 28) and made part of the case file.

indicating again that the case is ripe for decision. The defendants filed nothing.

As we explain in greater detail below, we agree with Doe that the potential harm which he alleges was not cured by the Amended Act. Our ruling on the parties' motions will be a ruling on the Amended Act, as any further community notification in connection with Doe would be done pursuant to the Amended Act and any issue arising under the Original Act are now moot.

1) Registration

Any one convicted of committing or attempting to commit one of the sex-related crimes listed at Section 9795.1 of the Amended Act is an "offender" subject to registration with the State Police. Act No. 2000-18 Section 9795.1. The term of registration, either ten years or lifetime, depends upon the particular crime of conviction and the number of convictions.

(i) Ten Year Registration - Section 9795.1(a)(1)

An individual who is convicted of committing or attempting to commit one of the following crimes, as listed at Section 9795.1(a)(1), is required to register with the State Police for a period

of ten years:

> 18 Pa.C.S. Section 2901 (relating to kidnaping) where the victim is a minor;
>
> 18 Pa.C.S. Section 3126 (relating to indecent assault), where the offense is a misdemeanor of the first degree;
>
> 18 Pa.C.S. Section 4302 (relating to incest), where the victim is 12 years of age or older but under 18 years of age;
>
> 18 Pa.C.S. Section 5902(b) (relating to prostitution and related offenses), where the actor promotes the prostitution of a minor;
>
> 18 Pa.C.S. Sections 5903(a)(3), (4), (5), or (6) (relating to obscene and other sexual materials and performances), where the victim is a minor;
>
> 18 Pa.C.S. Section 6312 (relating to sexual abuse of children); and 18 Pa.C.S. Section 6318 (relating to unlawful contact or communication with a minor;

Act No. 2000-18 Section 9795.1(a)(1).

(ii) Lifetime Registration - Sections 9795.1(b)(1) and (2)

An individual with two or more convictions of committing or attempting to commit any of the offenses set forth in Section 9795.1(a)(1) is subject to lifetime registration with the State Police.

Act No. 2000-18 Section 9795.1(b)(1).

An individual who is convicted of committing or attempting to

commit one of the following crimes, as listed at Section 9795.1(b)(2), is also subject to lifetime registration with the State Police:

> 18 Pa.C.S. Section 3121 (relating to rape);
>
> 18 Pa.C.S. Section 3123 (relating to involuntary deviate sexual intercourse);
>
> 18 Pa.C.S. Section 3124.1 (relating to sexual assault);
>
> 18 Pa.C.S. Section 3125 (relating to aggravated indecent assault);
>
> 18 Pa.C.S. Section 4302 (relating to incest), when the victim is under 12 years of age.

Act No. 2000-18 Section 9795.1(b)(2).

(iii) Lifetime Registration - Section 9795.1(b)(3)

An individual deemed to be a "sexually violent predator" is also subject to lifetime registration. Act No. 2000-18 Section 9795.1(b)(3). The Act defines a "sexually violent predator" as an individual who has been convicted of any criminal offense listed at either Section 9795.1(a)(1) or (b)(2) and who is also

> determined to be a sexually violent predator under section 9795.4 (relating to assessments) due to a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses. The term includes an individual determined to be a sexually violent predator where

> the determination occurred in another state, territory, federal court, the District of Columbia, or by court martial.

Act No. 2000-18 Section 9792.

Section 9795.4 requires a court to order an assessment of every individual convicted of an offense listed at either Section 9795.1(a)(1) or (b)(2) prior to sentencing. Act No. 2000-18 Section 9795.4. The order for assessment is sent to the administrative officer of the State Sexual Offenders Assessment Board (the "Board"), which is comprised of Governor appointed psychiatrists, psychologists and criminal justice experts with an expertise in the behavior and treatment of sexual offenders. Act No. 2000-18 Section 9799.3. A board member is designated to conduct an assessment of the individual to determine if the individual should be classified as a sexually violent predator. Act No. 2000-18 Section 9795.4. The board member's assessment shall include, among other things, an examination of the facts of the current offense; the individual's prior offense history; and the individual's characteristics. Id.

The Board must then submit an assessment to the district attorney in a written report no later than 90 days from the date of

conviction of the individual. Id. The district attorney may then seek to have the individual designated a sexually violent predator by filing a praecipe with the court. Id. The Commonwealth has the burden of proof by clear and convincing evidence in such proceeding. Id.

Upon the filing of a praecipe by the district attorney, the court must hold a hearing to determine whether the individual is a sexually violent predator. Id. The district attorney must serve a copy of the praecipe on defense counsel together with a copy of the Board's report. Id. Both the individual and the district attorney must be given an opportunity at the hearing to be heard; the right to call witnesses; the right to call expert witnesses; and the right to cross-examine witnesses. Id. The individual has the right to counsel and to have a lawyer appointed to represent him if he cannot afford one. Id. Based on the evidence presented at the hearing, the court must determine whether the Commonwealth has proved by clear and convincing evidence that the individual is a sexually violent predator. Id.

2) Community Notification

In addition to lifetime registration, the Amended Act mandates that offenders designated sexually violent predators be subjected to

broad community notification by the police. Act No. 2000-18 Section 9798. More specifically, the Amended Act requires the chief law enforcement officer of the police department of the municipality where a sexually violent predator lives (the "chief law enforcement officer") to distribute a written notice of the sexually violent predator's presence in the community.[4] Id. The Amended Act provides that the notice shall contain (i) the name of the convicted sexually violent predator; (ii) the address or addresses at which he resides; (iii) the offense for which he was convicted; (iv) a statement that he has been determined by a court order to be a sexually violent predator, which determination has or has not been terminated as of a date certain; and (v) a photograph of the sexually violent predator. Act No. 2000-18 Section 9798(a)(1). The Amended Act further provides that the chief law enforcement officer shall provide the

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[4] The Amended Act requires the State Police to create and maintain a registry of offenders and sexually violent predators. Act No. 2000-18 Section 9799.1(1). Within 72 hours of receiving an offender's or sexually violent predator's registration, the State Police notify the chief law enforcement officer of the municipality in which an offender or sexually violent predator resides of the fact that the offender or sexually violent predator has been registered with the State Police. Act No. 2000-18 Section 9799.1(4).

notice to the following individuals:

neighbors;[5]

the director of the county children and youth service agency of the county where the sexually violent predator resides;

the superintendent of each school district and the equivalent for each private and parochial school in the municipality where the sexually violent predator resides;

the licensee of each certified day care center and licensed preschool program and owner/operator of each registered family day-care home in the municipality where the sexually violent predator resides; and

the president of each college, university and community college located within 1,000 feet of the sexually violent predator's residence.[6]

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[5] "Neighbors" is defined in the Pennsylvania Administrative Code (the "PA Code") as "those persons occupying residences or places or employment, or both, located within a 250 foot radius of a sexually violent predator's residence, or the 25 most immediate residences and places of employment in proximity to the sexually violent predator's residence, whichever is greater." 37 Pa. Code Ch. 55.4 (2000). The Amended Act provides that the notice to neighbors must be provided by the chief law enforcement officer within 72 hours of his learning of the offender's release date and residence. Act No. 2000-18 Section 9798(c)(1). The chief law enforcement officer must provide the notice to all other persons within seven days of such date. Act No. 2000-18 Section 9798(c)(2).

[6] The PA Code provides that school superintendents, principals, day care directors and college presidents shall "disseminate the information regarding the sexually violent predator to individuals whose duties include supervision of or responsibility for students."

Act No. 2000-18 Section 9798(b). The Amended Act also directs the chief law enforcement officer to make the information contained in the notice "available, upon request, to the general public."[7] Act No. 2000-18 Section 9798(d). Presumably, the chief law enforcement officer may post such information on the Internet as the Amended Act further provides that the information may be provided by electronic means. Id.

3) Out-Of-State Offenders

i) The Original Act

Prior to the passage of the Amended Act, out-of-state offenders were covered by Sections 9793(d)[8] and 9795(c) of the Original Act. Section 9795(c), which is the focus of Doe's claims, provided that

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37 Pa. Code Ch. 56.4(1) and (2). Such individuals include "administrators, teachers, teachers aids, security officials, crossing guards, grounds keepers, bus drivers and the like." 37 Pa. Code. Ch. 56.4(2).

[7] The PA Code provides that the chief law enforcement officer should give consideration to taking the additional step of establishing "a log of individuals not specifically mentioned . . . [in the Act] to whom sexually violent predator information is provided." 37 Pa. Code Ch. 56.3(f).

[8] Section 9793(d) required out-of-state sex offenders to register with

[a]s a condition of obtaining residency in Pennsylvania under the interstate compact for the supervision of parolees and probationers, sexual offenders from other states shall be required to register and abide by the requirements of this subchapter and, where the Pennsylvania Board of Probation and Parole determines it is necessary to protect the public, shall submit to public notification. .

42 Pa. Cons. Stat. Section 9795(c).

On September 11, 1997, the Pennsylvania Board of Probation and Parole (the "Board") adopted a policy pursuant to Section 9795(c) of the Original Act which required as a condition of obtaining residency in Pennsylvania under the Pennsylvania Interstate Compact Concerning Parole statute, 61 Pa. Stat. Ann. Section 321 (the "Parole Compact")[9], that out of-state sexual

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the State Police.

[9] The Parole Compact is an agreement entered into by the states which governs the movement of parolees and probationers among the states. As explained by the Commonwealth Court of Pennsylvania in Aveline v. Pennsylvania Board of Probation and Parole, 729 A.2d 1254, 1257-58 (Pa. Commw. Ct. 1999):

[P]rior to its enactment, the movement of parolees or probationers to other states was done on an informal basis or by "gentlemen's agreements" between the states. The Council of State Governments, Handbook On Interstate Crime, 1 (ed. 78). However, problems arose because such agreements did not clearly establish the responsibilities of the receiving states in supervision of the parolee or probationer or the rights of a sending state to request the return of that individual. Because of these and other problems, in 1935, state officials drafted

offenders register with the State Police and submit to community notification. S-23.[10] To facilitate compliance with this condition, all out-of-state sex offenders applying for supervision under the Parole Compact were required to acknowledge and sign a "Pennsylvania State Police Sexual Offender Registration Notification" form and a "Pennsylvania State Police Sexual Offender Registration" form. S-23. The policy also required out-of-state sex offenders to sign an "Addendum to Application for Compact Services/Agreement to

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a proposed compact that sought to facilitate the interstate supervision of parolees and probationers because:

due to the existence of family in another state, better opportunities for employment there, or similar reasons, rehabilitation of a parolee or a probationer can be facilitated by transfer to that jurisdiction, but the rehabilitative value of such a move is often lost if the prisoner loses the supervision, advice, and assistance he would have received had he stayed in the state of his imprisonment, and the protection of the community to which he goes is threatened by the presence of a former criminal who has been left to work out his own destiny unassisted and uncontrolled.

Id. Because the Compact clarified these uncertainties, once Congress consented to the creation of the Compact, it was quickly ratified by all 50 states, including Pennsylvania, which ratified it in 1937.

(Footnote omitted).

[10] "S-x." refers to an enumerated paragraph in the parties' jointly filed Stipulation of Facts (Doc. No. 12).

Return" form acknowledging that he or she may be subject to community notification if he or she resides in Pennsylvania.[11] S-23. In accordance with the policy, therefore, there was no individualized determination by the Board as to which out-of-state sex offenders should initially be subjected to community notification. S-39. All out-of-state sex offenders were automatically subject to community notification. S-39.

ii) The Amended Act

Section 9795(c) was deleted from the Amended Act, though its contents, along with the Board's September 11, 1997 policy, were essentially repeated in a December 21, 1998 amendment to the Pennsylvania Board of Probation and Parole Law (the "PBPPL"), 61 Pa. Stat. Ann. Sections 331.1 et seq. Section 331.33(d)(3) was added to the PBPPL as part of the December 21, 1998 amendment which provides that any out-of state "parolee or probationer convicted of a sexual offense shall be required to . . . [s]ubmit to mandatory

[11] Prior to the adoption of the September 11, 1997 policy, out-of-state sexual offenders requesting a transfer of their probation to Pennsylvania under the Parole Compact generally agreed to the application of conditions that might be different in the sending state than in Pennsylvania and to registration under Megan's Law. S-40.

registration and public notification of all current addresses with the Pennsylvania State Police" as a condition of having his or her transfer accepted under the Parole Compact. 61 Pa. Stat. Ann. Section 331.33(d)(3)(i). The Board's September 11, 1997 policy was further codified as part of the December 21, 1998 amendment to the PBPPL at Sections 331.33(d)(3)(ii) and (iii), which s' hat any out-of-state parolee or probationer convicted of a sexual offense shall be required to:

> (ii) Provide a signed copy of the "Pennsylvania State Police Sexual Offender Registration Notification" form and the "Pennsylvania State Police Sexual Offender Registration" form to the receiving state.
>
> (iii) Provide a signed copy of "Addendum to Application for Compact Services Agreement to Return" form to the receiving state.

61 Pa. Stat. Ann. Sections 331.33(d)(ii) and (iii).

Out-of-state offenders are addressed at a new section under the Amended Act, Section 9795.2(b). Section 9795.2(b)(1) provides that the Amended Act's registration requirements shall apply to those individuals who have an out of-state conviction equivalent to an offense listed in the Amended Act or who have been required to

register under another state's sexual offender statute. Act No. 2000-18 Section 9795.2(b)(1).Section 9795.2(b)(3) further provides that an out-of-state offender who is subject to registration and who is also "paroled to the Commonwealth pursuant to the [Parole Compact] shall, in addition to the requirements of [the Amended Act], be subject to the requirements of [Section 331.33 of the PBPPL]." Act No. 2000-18 Section 9795.2(b)(3).

In sum, out-of-state offenders are treated the same under the Amended Act as they were under the Original Act. Section 9795(c) of the Original Act was essentially moved to Section 331.33(d) of the PBPPL and the Board's September 11, 1997 policy has been codified there as well. In turn, Section 331.33(d) was incorporated into the Amended Act at Section 9795.2(b). Thus, although the rules have been reshuffled, the results are the same. All out-of-state sex offenders are still automatically subject to community notification.

4) In-State v. Out-of-State Offenders

Under The Amended Act

Out-of-state offenders are treated differently than instate offenders under the Amended Act. First, no in-state offender whose

crime was committed prior to April 26, 1996 is subject to community notification. All out-of-state offenders, including Doe and others whose crimes were committed prior to April 26, 1996, are subjected to community notification.

Also, the Amended Act provides no process for determining whether an out-of-state offender's crime is even equivalent to a listed offense. In contrast, only those in-state offenders who have been convicted of a listed offense and who have also been adjudicated as meeting the definition of a sexually violent predator, as defined in the Amended Act, are subject to community notification.

Moreover, out-of-state offenders, as opposed to in-state offenders, are subjected to community notification without any process. In-state offenders must receive notice, counsel, a psychological assessment, and a court hearing, at which the state has the burden of proving by clear and convincing evidence that he or she is a sexually violent predator as defined in the Amended Act. Out-of-state offenders are instead automatically subject to community notification as a condition of their obtaining Pennsylvania residency under the Parole Compact regardless of the

circumstances surrounding their offense, their criminal history, or any assessment as to his or her propensity for recidivism. Furthermore, there is no provision under the Amended Act authorizing or permitting judicial review of an out-of-state sex offender's challenge to community notification.[12]

B. John Doe

Doe currently resides in Pennsylvania. S-1. Defendant William F. Ward is Chairman of the Board and is being sued in his official capacity. S-2. Paul J. Evanko has been substituted for defendant Jeffrey Miller. S-3. Mr. Evanko is the Commissioner of the State Police and is being sued in his official capacity. S-3.

In late 1995, Doe engaged in a sexual relationship with an underage 15 year old girl (hereinafter referred to as "Smith"). S-5. Doe was 32 years old at the time and was the coach of Smith's

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[12] As we describe in greater detail below, the defendants maintain that there is a procedure whereby a probationer can register a complaint with the Board regarding a condition of probation. We note that such a procedure, which apparently would proceed after the probationer has been subjected to community notification, does not approach the extensive process afforded in-state offenders before community notification and therefore, would not constitute similar treatment.

softball team. S-5. At the time, Doe resided in a state outside of Pennsylvania (hereinafter referred to a "State X"). S-5. Over a four month period, Doe and Smith engaged in oral sex and sexual intercourse on a regular basis in the rear of Doe's van in a shopping center parking lot, at Doe's residence, and at various motels. S-8. Smith became pregnant from the relationship and obtained an abortion. S-8. Doe accompanied Smith to, and paid for, the abortion. S-8.

Prior to their sexual relationship, Doe was aware that Smith had emotional problems relating to bulimia, that her parents' were divorced, and that her grandfather had sexually molested her by, in her words, "touch[ing] her private areas," when she was a child. S-6. Doe was also aware that the relationship was an illegal act and that it was a sex offense. S-5. But in Doe's words, "I loved her and she loved me," and "I followed my heart instead of my brain." S-6.

Doe left State X in April 1996 and returned to Pennsylvania because he felt the relationship was getting out of control with Smith's increased displays of affection and that he could get into serious trouble. S-6. In late 1996, a criminal complaint was filed

against Doe by State X law enforcement authorities charging him with seven first degree felonies and one second degree felony in connection with his relationship with Smith. S-7. The police officer who investigated the case requested that one charge of "sexual battery upon a child under sixteen" be filed against Doe. S7. Sexual battery is a first degree felony in State X. S-7.

Thereafter, Doe was advised by his mother that two individuals had come to her house looking for him. S-7. Based upon a subsequent conversation with Smith, Doe contacted an attorney. S-7 The attorney advised Doe that an arrest warrant had been issued for him. S-7. Upon advice of counsel, Doe voluntarily returned to State X, after having been advised that he could be extradited there if he did not return. S-7.

Doe negotiated a plea agreement with State X's prosecuting authorities whereby he pled guilty to four counts of lewd assault, a second degree felony, lesser included offense. S-8. On March 27, 1997, Doe was given a 90 day sentence in a county detention center and 10 years probation. S-9. Among the conditions of probation imposed was a requirement that Doe obtain psychological counseling

and successfully complete treatment; that he have no contact with the victim; that he reimburse reasonable current and future therapy for the victim; and that he have no contact with minors under 18 years of age without supervision by an adult who is aware of his probation and the nature of the charges. S-9. Prior to this incident, Doe's criminal record consisted of one driving under the influence charge in 1984, for which he was required to pay a small fine and attend certain classes. S-4.

During the plea and sentencing, the court did not identify any aggravating circumstances warranting a longer sentence but did identify two mitigating factors to justify a downward departure from the pertinent sentencing guidelines, (1) a legitimate un coerced plea bargain and (2) a victim that was a willing participant of the incident. S-10. At no time during the plea bargaining or during the sentencing did anyone mention Megan's Law to Doe. S-10.

On April 28, 1997, Doe applied for a transfer of supervision from State X to Pennsylvania pursuant to the Parole Compact. S-11. Doe indicated in the application that he would comply with the conditions of supervision as fixed by both State X and Pennsylvania. S-11. The

application did not mention, however, public notification under Megan's Law. S11. The Board later received information from State X which identified Doe as a sex offender on probation for a felony conviction and further identified the judgment of guilt and the conditions of probation. S-11.

The Board sent an investigation request to State X on or about June 9, 1997 asking State X to advise Doe to report to a Board district office within 24 hours of arrival and that Pennsylvania Megan's Law sex offender registration would be required. S-12. On June 13, 1997, Doe signed a "Special Conditions of Parole" form acknowledging the conditions of his parole being transferred to Pennsylvania including the requirement that he check with the police jurisdiction where he is traveling in order to comply with all state, county, municipal law and ordinances regarding criminal registration in the community that he was being given permission to visit. S-13.

The Megan's Law paperwork was completed on Doe on June 13, 1997, including the police registration paperwork. S-14 Doe complied with the probation officer's instructions and registered as a

sex offender with the State Police.[13] S-14. Doe maintains that he was informed on this date that he would not be subject to public notification pursuant to Megan's Law because he was not a sexually violent predator, but that he was aware of the registration requirement under Megan's Law a day before he returned to Pennsylvania. S-14.

Doe also executed a "Conditions Governing Parole/Re-parole" form on June 13, 1997 relating to the conditions governing his parole. S-16. The form contained pre-printed language advising Doe of his right to submit a complaint in writing to the Board's district director and then to the Board's director of supervision if he believed his rights were being violated as a result of parole supervision. S-16. The Board has had a written policy since at least September 30, 1991 governing general and special conditions of parole and re-parole. S-16. Appeals by a person on probation regarding a general or special condition of probation may be raised through this procedure. S-16. The form did not mention, however, community notification under

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[13] Doe has not objected to the registration requirement in this proceeding.

Megan's Law. S-30.

The transfer of Doe's probation was approved on June 17, 1997. S-15. Since returning to Pennsylvania, Doe has lived and worked without incident. S-18. He has also complied with all conditions of his probation, including the condition that he obtain counseling and that he pay for Smith's therapy costs. S-17.

In May 1998, Doe made an inquiry to his probation officer as to whether Megan's Law was only applicable to first degree felons, rather than second degree felons. S-21. He was advised in writing by a Board employee that Megan's Law also applied to second degree felons. S-21.

On or about July 20, 1998, Doe received a letter from the Board dated June 26, 1998 which indicated that he was subject to community notification. S-25. Although the letter was dated June 26, 1998, the envelope was post marked July 16, 1998. Additionally, the address on the envelope was incorrect. S-26. Doe had notified his probation officer of the address change at the time. S-26.

Doe testified that he saw his probation officer on July 21, 1998 and asked about the June 26, 1998 letter. S-27. Doe testified that the

officer did not really know what it meant and thought it was some kind of form letter. S-27. At that meeting, Doe also signed another "Conditions Governing Parole/Re-parole" form which again contained pre-printed language about the right to file a complaint about any condition of probation, but made no mention of community notification under Megan's Law. S-27, 30.

Doe contacted the State Police immediately after he received the June 26, 1998 letter indicating that he would be subject to community notification. S-28. The State Police advised Doe to look up the law. S-28. The June 26, 1998 letter was the only notice of community notification that was provided to Doe. S-29.

Doe was aware of and agreed to comply with all conditions of probation imposed by the receiving state when he applied to return to Pennsylvania. S-30. He also understood that if he did not so agree, his transfer of probation would not be accepted. S-30. Doe was also aware that he could appeal the imposition of any condition of probation and had done so in connection with another matter two months earlier in May 1998. S-30. However, Doe never submitted a complaint to the Board over the issue of community notification. S-

22.

On July 27, 1998, a local police officer distributed public notification fliers to approximately 75 of Doe's neighbors. S-31. The fliers contained Doe's name, photograph and current address, which is that of a family member with whom he resided. Exhibits to Stipulation of Facts ("Stip. Exs.") (Doc. No. 13) (filed under seal) at Ex. W. The fliers were titled, in large bold letters, "MEGAN'S LAW." Id. Beneath the title was the following:

OUT-OF-STATE OFFENDER COMMUNITY NOTIFICATION FLIER

This is to inform you that the below listed individual has been designated for Community Notification by the Pennsylvania Board of Probation and Parole, as outlined in Title 42, Judiciary and Judicial Procedure, of the Pennsylvania Consolidated Statutes, Chapter 97, Subchapter H, Registration of Sexual Offenders:

COMMUNITY NOTIFICATION IS REQUIRED FOR THIS DESIGNATION

The subject was convicted of Pennsylvania Crimes Code Section or in the case of Out-of-State Offenders, the appropriate equivalent: [18 Pa. Cons. Stat. Ann. Section] 3125 [relating to aggravated indecent assault]

Id. The flier provides no additional information about Doe's

offense.[14] Id.

The fliers were also distributed by the police officers to local schools, day care centers, and licensed preschool programs and made available to the general public. S-32, 33. The police officers' actions were in accordance with state law. S-32.

II. Analysis[15]

Doe has looked exclusively to the U.S. Constitution for relief

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[14] The defendants point to what they consider an important distinction in the wording of the community notification flier issued for an individual designated a sexually violent predator and the community notification flier issued for an out-of-state sex offender. Specifically, the sexually violent predator flier uses the term "Sexually Violent Predator" at the top whereas the out-of-state offender community notification flier uses the terms "Megan's Law" and "Sexual Offender." There would be little difference in the stigma resulting from community notification by omitting the phrase Sexually Violent Predator" and instead labeling one a "Megan's Law Sexual Offender." The public's knowledge of Megan's Law generally comes from the case involving a sevenyear old New Jersey girl, Megan Kanka, who on October 31, 1994, was brutally raped and murdered by a twice-convicted sex offender who lived next door. We have little doubt that given this background, the public's perception of an individual labeled a"Megan's Law Sexual Offender would be that of a dangerous child molester.

[15] Summary judgment is mandated where the pleadings and evidence on file show there is no genuine dispute of material fact, and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c).

from community notification. "However, it is well established that courts have a duty to avoid passing upon a constitutional question if the case may be disposed of on some other ground." Spicer v. Hilton, 618 F.2d 232, 239 (3d Cir. 1980) (citations omitted). Without ruling on the constitutional issues raised by Doe, we find that the Compact requires Pennsylvania to provide Doe with the same process as is provided to in-state offenders before subjecting him to community notification.[16]

A Jurisdiction

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[16] Doe did not assert a claim for relief pursuant to the Parole Compact as part of his complaint. In light of the strong preference for avoiding premature constitutional decisions, the court raised the issue sua sponte and requested additional briefs on the matter, which have now been submitted. See Spicer, 618 F.2d at 240-41 wherein the Court of Appeals for the Third Circuit observed that, [t]he compulsion to avoid premature constitutional decisions is so strong that this court has previously held that it supersedes even our customary concern with orderly presentation on the issues. . . . That is also true where, as here, the nonconstitutional basis for the decision was neither raised in the pleadings nor ruled upon by the lower court. The Supreme Court has on several occasions even applied the doctrine when the nonconstitutional ground was not presented by the parties but was first noticed by the Court itself. (Citations and quotation omitted).

We first address the threshold issue of jurisdiction. Federal courts lack subject matter jurisdiction to enjoin state officials on the basis of state law. Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89 (1984) (Eleventh Amendment prohibits federal court from ordering state officials to conform their conduct to state law). A finding that the Parole Compact is federal law, therefore, is a jurisdictional prerequisite. We have uncovered only one case, Warner v. Parke, 1996 WL 495040 (7th Cir. Aug. 29, 1996), an unpublished opinion from the United States Court of Appeals for the Seventh Circuit, that has spoken on the federal/state law status of the interstate parole compact. The Seventh Circuit concluded in Warner that as an interstate compact approved by Congress, the interstate parole compact operates as both state and federal law. Id. at *3. Although the court cited to Reed v. Farley, 512 U.S. 339, 347 (1994), the court provided no analysis for its conclusion.

The Supreme Court has never ruled on the issue of whether the interstate parole compact is federal law. In Cuyler v. Adams, 449 U.S. 433 (1981), however, the Court held that the Interstate

Agreement on Detainers ("IAD"), a substantially similar interstate compact, is a federal law subject to federal court construction. The Court reaffirmed its holding in Carchman v. Nash, 473 U.S. 716, 719 (1985) (The IAD "is a congressionally sanctioned interstate compact within the Compact Clause, U.S. Const., Art. I, Section 10, cl. 3, and thus is a federal law subject to federal court construction." (citing Cuyler)) and Reed v. Farley, 512 U.S. 339 (1994) ("While the IAD is indeed state law, it is a law of the United States as well." (citing Carchman and Cuyler)).

The Court explained in Cuyler that an interstate compact is transformed into federal law when (1) it falls within the scope of the Constitution's Compact Clause, (2) it has received congressional consent, and (3) its subject matter is appropriate for congressional legislation. Id. at 439-40. The interstate parole compact satisfies each of these conditions.

First, the need to assert cross-border control of people subject to the jurisdiction of the criminal justice system, whether individuals with detainers or parolees, is a matter that falls within the scope of the Constitution's Compact Clause. See Cuyler, 449 U.S. at 442,

n.10. Second, the interstate parole compact has received congressional consent. In fact, the legislative source of the congressional consent is the same for both the IAD and the interstate parole compact. See Compacts between States for the Cooperation in Prevention of Crime, 4 U.S.C. Section 112. Lastly, the subject matter is appropriate for congressional legislation, as the need for interstate cooperation to monitor and control par[illegible] is the same as it is for inmates with detainers.

Accordingly, we hold that the Parole Compact, as a congressionally sanctioned interstate compact, is a federal law as well as state law. We further hold, therefore, that this court has subject matter jurisdiction to interpret and apply the Parole Compact.

B. Rules of Statutory Construction

The defendants have steadfastly maintained that the Board had an unfettered right under the Parole Compact to reject Doe's transfer to Pennsylvania. We disagree.

The Parole Compact provides in pertinent part as follows:

> Entered into by and among the contracting states, signatories hereto, with the consent of the Congress of the United States of America granted by an act, entitled 'An act granting the

consent of Congress to any two or more states to enter into agreements or compacts for cooperative effort and mutual assistance in the prevention of crime and for other purposes.'

The contracting states solemnly agree:

(1) That it shall be competent for the duly constituted judicial and administrative authorities of a state party to this compact (herein called the 'sending state') to permit any person, convicted of an offense within such state and placed on probation or released on parole, to reside in any other state party to this compact (herein called 'receiving state') while on probation or parole, if -

(a) Such person is in fact a resident of or has family residing within the receiving state and can obtain employment there.

(b) Though not a resident of the receiving state and not having his family residing there, the receiving state consents to such person being there.

Before granting such permission, opportunity shall be granted to the receiving state to investigate the home and prospective employment of such person.

A resident of the receiving state, within the meaning of this section, is one who has been an actual inhabitant of such state continuously for more than one year prior to his coming to the sending state, and has not resided within the sending state more than six continuous months immediately preceding the commission of the offense for which he has been convicted.

(2) That each receiving state will assume the duties of visitation of, and supervision over, probationers or parolees of any sending state, and, in the exercise of those duties, **will be governed by the same standards that prevail for its own probationers and parolees.**

61 Pa. Stat. Ann. Section 321 (emphasis added).

The plain language of the Parole Compact indicates that the authority to approve a probationer's move to a receiving state lies solely with the sending state if, like Doe[17], the probationer meets the requirements outlined in subsection (1)(a) -- i.e., the probationer is either a resident of the receiving state or has family residing there and he or she can obtain employment there. See United States v. Gollapudi, 130 F.3d 66, 70 (3d Cir. 1997) ("In interpreting a statute, the language of the starting point is the statute itself. . '[O]nly the most extraordinary showing of contrary intentions' in the legislative history will justify a departure from that language." (Citations and quotation omitted)). If neither the residency nor family residency requirements of subsection (1)(a) are satisfied, subsection (1)(b) provides that the sending state may permit a transfer only upon the receiving state's consent. If the requirements of subsection (1)(a) are not met, therefore, the authority to approve of a probationer's move to a receiving state is shared as between the sending state and

[17] See Stip. Exs. at Ex. Z-1, p. 20.

receiving state.

The Parole Compact next provides that a receiving state ***"will assume*** the duties of visitation of and supervision over" the probationer from the sending state and that "in the exercise of those duties, ***will be governed by the same standards*** that prevail for its own probationers and parolees". 61 Pa. Stat. Ann. Section 321(2) (emphasis added). Thus, once a sending state grants permission pursuant to either subsection (1)(a) or (b), the receiving state must assume supervision over the probationer and treat him or her the same as in-state offenders.

This interpretation is consistent with the "fundamental rule of construction [] that effect must be given to every part of a statute or regulation, so that no part will be meaningless." Sekula v. Federal Deposit Ins. Corp., 39 F.3d 448, 454 (3d Cir. 1994). If, for example, a receiving state's consent to a transfer were always required, as the defendants argue, subsection (1)(a) of the Parole Compact would be meaningless.

The regulations promulgated by the Parole and Probation Compact Administrators' Association (the "Administrators'

Association")[18] also supports our reading of the statute. See e.g., ALM Corp. v. United States Environmental Protection Agency, Region II, 974 F.2d 380, 383 (3d Cir. 1992) (judicial deference is given to agency's reasonable interpretation of a statute that it administers whether it is interpreting statute directly or through the promulgation of a rule or regulation, so long as such interpretation does not conflict with the plain language of the statute). Section 3-106 of the regulations provides that:

> No state shall refuse to supervise a parolee or probationer eligible under the Compact who has the necessary employment and residency qualifications .. . .

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[18] In the interest of uniform application and interpretation, Section (5) of the Parole Compact provides a mechanism for the issuance of rules and regulations for uniform administration, stating:

That the governor of each state may designate an officer who, acting jointly with like officers of other contractir ıtes, if and when appointed, shall promulgate such rules anc ulations as may be deemed necessary to more effectively carry out the terms of this compact.

61 Pa. Stat. Ann. Section 321(5); Aveline, 729 A.2d at 1258. The Administrators' Association was created pursuant to this provision which consists of designated officers from each state who promulgate rules and regulations for the uniform application of the Parole Compact. Compact for the Supervision of Parolees and Probationers Manual, Section 1.7 (1999); Aveline, 729 A.2d at 1258

Compact for the Supervision of Parolees and Probationers Manual ("Regulations Manual"), Section 3-106 (1999). Moreover, as a participant in the Association, Pennsylvania would be bound by the Association's regulations. See Aveline, 729 A.2d at 1258 (finding that Pennsylvania may be bound by the Association's regulations if a member but unable to determine whether Pennsylvania was a member); see e.g., First Liberty Investment Group v. Nicholsberg, 145 F.3d 647, 650 (3d Cir. 1998) (member of self-regulating association is bound by association's regulations).

We note that the defendants contend that the term "standards" in Section 321(2) is different from what they term is a "condition" of probation at Section 331.33(d)(3) (requirement that every out-of-state sex offender submit to community notification). The defendants maintain that the Administrators' Association's regulations support the notion that these are distinct terms because (1) the regulations clearly contemplate that a receiving state may impose special conditions on parole and (2) standards of supervision are addressed at Section 400, the commentary to which indicates that what is meant by "same standards" language in Section 321(2) is that a receiving

state not provide a lesser level of service for out-of-state cases than it does for its own cases. The defendants argue, therefore, that the requirement that every out-of-state sex offender submit to community notification without any process, even though in-state offenders must be accorded extensive process, does not conflict with Section 321(2) because such requirement is a "condition" of probation not a "standard."

Other than the reference to the Administrators' Association's regulations, the defendants offer little analysis in support of their position. We have reviewed the regulations and fail to see the illuminating distinction urged upon us.

Even so, we note that in common parlance a "condition" is defined as a "prerequisite . . . a restricting or modifying factor." Merriam-Webster's Collegiate Dictionary at 240 (10th ed. 1999). A "standard" is defined as a "criterion ..something set up and established by authority as a rule for the measure of quantity, weight, extent, value, or quality." Id. at 1145. Any distinction that can be drawn from these definitions does not change our analysis. Indeed, so defined, these terms do not contrast with the defe nts' notion

that the regulations contemplate that a receiving state may impose a special condition of parole. If a receiving state intends to impose mandatory community notification as a special "condition" on an out-of-state sex offender, such as Doe, it may, but it must first apply the same "standards," or measuring criterion, as is used for in-state offenders when doing so, i.e., a court hearing. As the defendants point out, the Administrators' Association's regulations contemplate that a receiving state shall not provide a lesser level of service for out-of-state cases than it does for its own cases.[19]

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[19] The defendants requested in their brief an opportunity to submit supporting affidavits "[i]f the court remains uncertain about the distinction between standards and conditions." Defs' Br. Regarding Interstate Compact (Doc. No. 27) p. 9, n.3. In the context of statutory interpretation, the court looks to the language of the statute. See Gollapudi, 130 F.3d at 70. The court, not the defendants, make the determination as to what meaning should be ascribed to that language. We recognize that deference is generally given to an agency's interpretation of a statute that it administers, so long as such interpretation does not conflict with the plain language of the statute. Thus, any rule or regulation issued by the Administrators' Association, the body charged with the responsibility of promulgating rules and regulations for use in the administration of the Parole Compact, regarding the meaning of "standards" could be helpful to the court. A sworn statement by the defendants as to what they think certain language in the statute means, however, would not be at all important.

(Conflicting Statutes

.s previously noted, Section 331.33(d)(3) of the PBPPL requires every out-of-state probationer convicted of a sex offense to submit to community notification as a prerequisite to the acceptance of such probationer's transfer under the Parole Compact. 61 Pa. Stat. Ann. Section 3 .33(d)(3). Section 331.33(d)(3) essentially changes the terms of the Parole Compact as it places additional conditions on the transfer of parolees and probationers who, like Doe, satisfy the residency and employment requirements of subsection (1)(a) of the Parole Compact.

An interstate compact functions as a contract and "takes precedence ove. statutory law in member states." McComb v. Wambaugh, 934 F.2d 474, 479 (3d Cir. 1991); see Regulations Manual Commentary to Section 1-101 ("The law of interstate compacts as interpreted b. the U.S. Supreme Court is clear that interstate compacts are the highest form of state statutory law, having precedence over conflicting state statutes . . . .") "Having entered into a contract, a participant state may not unilaterally

change its terms."[20] Id. Under the facts of the instant case, therefore, Section 331.33(d)(3) is superseded by the Parole Compact.

We note that uniformity of interpretation is important in the construction of a compact. See McComb, 934 F.2d at 479. Thus, we searched both federal and state appellant case law for any case where the Parole Compact had been interpreted under facts similar to the instant case. We found no such case.

We also searched state statutory law to determine whether any other state has, like Pennsylvania, placed extraneous conditions on the acceptance of out-of-state offenders under the Parole Compact. We are aware of only two other states, Illinois and Tennessee, that have statutes which place specific conditions on the acceptance of

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[20] See also Aveline, 729 A.2d at 1257 n.10 observed that,

[c]ompacts have the characteristics of contracts because the enactment of the compact terms as part of an enabling statute by one state is viewed as an offer. The offer may be accepted through the enactment of statutes, including the same compact terms by another state. As with other contracts, the Contract Clause of the United States Constitution protects compacts from impairment by the states. This means that upon enacting a compact, it takes precedence over statutes of signatory states and, as such, a state may not unilaterally nullify, revoke or amend one of its compacts if the compact does not so provide." (Internal citations omitted).the subsequent

transfers under the Parole Compact. The additional conditions in these states, however, do not appear to infringe upon the Parole Compact.

Illinois requires, for example, that all out-of-state sex offenders submit a blood specimen for genetic marker grouping as a condition of having his or her transfer accepted under the Parole Compact. 730 Ill. Comp. Stat. Section 5/5-4 3(a)(5). Illinois also requires, however, that all in-state sex offenders submit a blood specimen. 730 Ill. Comp. Stat. Section 5/5-4-3(a)(1) and (3). Because the Parole Compact requires a receiving state to apply the same standards to transferees that prevail for its own probationers and parolees, Illinois has merely imposed as a condition of acceptance a requirement that an out-of-state sex offender would have to comply with anyway, once he or she transfers to the state. Thus, we doubt that such a condition would be regarded as an invalid infringement upon the Parole Compact's non-discretionary transfer provision, i.e. residency and employment in the receiving state.

Tennessee, like Illinois, imposes a condition on the acceptance of

out-of-state sex offenders under the Parole Compact that is also a requirement imposed upon in-state sex offenders. See Tenn. Code Ann. Sections 40-28-409 and 40-3521 (requiring the submission of DNA sample). Again, we doubt that such a condition would run afoul of the Parole Compact's non-discretionary transfer provision.

In sum, we have found nothing in the case law or state statutory law which would suggest uniform acceptance of a state having the authority to, as Pennsylvania has done, unilaterally modify the terms of the Parole Compact.

D. Sending State's Authority and Waiver

The defendants also contend that under the Parole Compact, a sending state is not required to grant permission to a probationer who, like Doe, satisfies the residency and employment requirements and suggests that Pennsylvania could request State X to have Doe returned. We do not disagree that under the terms of the Parole Compact a sending state has the discretion to deny a probationer's request for a transfer even if the probationer satisfies the residency and employment requirements in a receiving state. Also, it may be that a receiving state could request a sending state to agree to

mandatory submission to community notification without any process as a condition of approving a probationer's transfer. What the Parole Compact does prohibit, however, is a receiving state unilaterally imposing such a condition, as Pennsylvania has done at 61 Pa. Stat. Ann. Section 331.33(d)(3). Otherwise, a state, such as Pennsylvania, could stifle the transfer of probationers and parolees among the states and unfairly filter out those individuals that it deems undesirable.

In the instant case, for example, State X does not have a statute similar to Section 331.33(d)(3). Thus, although State X would be required to accept Pennsylvania's sex offenders, Pennsylvania could end up with no State X sex offenders, as it is unlikely a sex offender in State X would seek a transfer to Pennsylvania knowing that he or she will automatically be subjected to community notification without any process. One can only assume that this is the very type of situation the states sought to avoid with the enactment of the Parole Compact.

As to the defendants' suggestion that Pennsylvania could seek the return of Doe to State X, we questio State X's eagerness to

comply with such request absent a reciprocal agreement in relation to Pennsylvania sex offenders seeking a transfer to State X. The consummation of such side agreements could, in the end, halt the transfer of sex offenders between the states and undermine the essence of the Parole Compact.

On a final note, the defendants argue that Doe waived the process accorded in-state offenders prior to community notification when applying for a transfer, as he agreed to comply with the conditions of the receiving state in the transfer application. We disagree.

Doe's transfer application is not sufficiently detailed to effectuate such a waiver. The proviso acknowledging an agreement to comply with the receiving state's conditions of probation is written in general terms. Stip Exs. at Ex. H. There is no mention of mandatory submission to community notification. Id.

Also, a receiving state's obligation under the Parole Compact to apply the same standards to in-state and out-of-state probationers and parolees runs directly to member states. Thus, we doubt Doe's authority to waive that obligation.

III. Conclusion

After reviewing the parties' submissions, we find that there are no genuine disputes of material fact and that Doe is entitled to judgment as a matter of law. Although Doe raised numerous constitutional issues in support of his motion, we find that this case may be disposed of on other grounds -- the plain language of the Parole Compact. Without ruling on the constitutional issues, we hold, based on a plain reading of the Parole Compact, that the Board did not have the authority under the facts of this case to either reject or place the extraneous condition of community notification on Doe's move to Pennsylvania and that Doe must be provided with the same process as is provided to in-state sex offenders before subjected him to community notification.

Accordingly, the defendants' motion for summary judgment will be denied and Doe's motion for summary judgment will be granted. Therefore, Doe's request for injunctive relief will be granted.

An order consistent with this memorandum opinion will be entered.

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JOHN DOE,

Plaintiff,

v. Civil Action No. 98-1746

WILLIAM F. WARD, in his
official capacity as the
Chairman of the Pennsylvania Board of Probation and Parole; and
JEFFERY MILLER,
in his official capacity as the Commissioner of the
Pennsylvania State Police,

Defendants

ORDER

For the reasons stated in the accompanying memorandum opinion, **IT IS HEREBY ORDERED** that the plaintiff's motion for summary judgment (Doc. No. 17) is **GRANTED** and the defendants' motion for summary judgment (Doc. No. 14) is **DENIED.**

Accordingly, **IT IS FURTHER ORDERED** that the defendants,

their agents, employees, assigns and all those acting in concert with them are **HEREBY ENJOINED** from enforcing or applying to plaintiff the community notification requirements of Pennsylvania's Megan's Law, 42 Pa. Cons. Stat. Sections 9791-9799.7, or any rules, regulations or policies that have been promulgated pursuant thereto, until and unless he is accorded the same process as is provided to in-state offenders prior to their being subjected to community notification. **IT IS FURTHER ORDERED** that until and unless the plaintiff is accorded the same process as in-state offenders are provided prior to their being subjected to community notification, the defendants, their agents, employees, assigns and all those acting in concert with them are **HEREBY ENJOINED** from any further:

> (1) disclosure to the public of any Megan's Law related information about plaintiff, including but not limited to the Megan's Law community notification fliers;
>
> (2) maintenance of any Megan's Law related information about plaintiff in any location accessible to the public, including but not limited to office buildings and electronically on any Internet web site; and
>
> (3) disclosure to the public of any information revealing the plaintiff's identity.
>
> The Clerk is directed to mark this case closed.

SO ORDERED this 18th day of September, 2000.

Robert J. Cindrich

ROBERT J CINDRICH
United States District Judge

Cc: Witold Walczak ACLU of PA
313 Atwood Street
Pittsburgh, PA 15213

Thomas Halloran
Office of the Attorney General 564 Forbes Avenue 6th Floor,
Manor Complex Pittsburgh, PA 15219

INTERSTATE COMMISSION FOR ADULT OFFENDER SUPERVISON

BYLAWS

Article I
Commission Purpose, Function and By-laws

Section 1. Purpose.
Pursuant to the terms of the Interstate Compact for Adult Offender Supervision, (the "Compact"), the Interstate Commission for Adult Offender Supervision (the "Commission") is established to fulfill the objectives of the Compact, through a means of joint cooperative action among the Compacting States: to promote, develop and facilitate safe, orderly, efficient, cost effective and uniform transfer and supervision of adult offenders in the community who are authorized pursuant to the bylaws and rules of this Compact to travel across state lines both to and from each compacting state, and when necessary return offenders to the originating jurisdictions.

Section 2. Functions.
In pursuit of the fundamental objectives set forth in the Compact, the Commission shall, as necessary or required, exercise all of the powers and fulfill all of the duties delegated to it by the Compacting States. The Commission's activities shall include, but are not limited to, the following: the promulgation of binding rules and operating procedures; oversight and coordination of offender transfer and supervision activities in Compacting States; provision of a framework for the promotion of public safety and protection of victims; provision for the effective tracking, supervision, and rehabilitation of these

offenders by the sending and receiving states; equitable distribution of the costs, benefits and obligations of the Compact among the Compacting States; enforcement of Commission Rules. Operating Procedures and By-laws; provision for dispute resolution; coordination of training and education regarding the regulation of interstate movement of offenders for officials involved in such activity; and the collection and dissemination of information concerning the activities of the Compact, as provided by the Compact, or as determined by the Commission to be warranted by, and consistent with, the objectives and provisions of the Compact.

Section 3. By-laws.

As required by the Compact, these By-laws shall govern the management and operations of the Commission. As adopted and subsequently amended, these By-laws shall remain at all times subject to, and limited by, the terms of the Compact.

Article II
Membership

The Commission Membership shall be comprised as provided by the Compact. Each Compacting State shall have and be limited to one Member. A Member shall be the Commissioner of the Compacting State. Each Compacting State shall forward the name of its Commissioner to the Commission chairperson. The Commission chairperson shall promptly advise the Governor and State Council for Interstate Adult Supervision of the Compacting State of the need to appoint a new Commissioner upon the expiration of a designated term or the occurrence of mid-term vacancies.

Article III
Officers

Section 1. Election and Succession.
The officers of the Commission shall include a chairperson, vice chairperson, secretary and treasurer. The officers shall be duly appointed Commission Members, except that if the Commission appoints an Executive Director, then the Executive Director shall serve as the secretary. Officers shall be elected annually by the Commission at any meeting at which a quorum is present, and shall serve for one year or until their successors are elected by the Commission. The officers so elected shall serve without compensation or remuneration, except as provided by the Compact.

Section 2. Duties.
The officers shall perform all duties of their respective offices as provided by the Compact and

these By-laws. Such duties shall include, but are not limited to, the following:

a. *Chairperson.* The chairperson shall call and preside at all meetings of the Commission and in conjunction with the Executive Committee shall prepare agendas for such meetings, shall make appointments to all committees of the Commission, and, in accordance with the Commission's directions, or subject to ratification by the Commission, shall act on the Commission's behalf during the interims between Commission meetings.

b. *Vice Chairperson.* The vice chairperson shall, in the absence or at the direction of the chairperson, perform any or all of the duties of the chairperson. In the event of a vacancy in the office of chairperson, the vice chairperson shall serve as acting chairperson until a new chairperson is elected by the Commission.

c. *Secretary.* The secretary shall keep minutes of all Commission meetings and shall act as the custodian of all documents and records pertaining to the status of the Compact and the business of the Commission.

d. *Treasurer.* The treasurer, with the assistance of the Commission's executive director, shall act as custodian of all Commission funds and shall be responsible for monitoring the administration of all fiscal policies and procedures set forth in the Compact or adopted by the Commission. Pursuant to the Compact, the treasurer shall execute such bond as may be required by the Commission

covering the treasurer, the executive director and any other officers, Commission Members and Commission personnel, as determined by the Commission, who may be responsible for the receipt, disbursement, or management of Commission funds.

Section 3. Costs and Expense Reimbursement. Subject to the availability of budgeted funds, the officers shall be reimbursed for any actual and necessary costs and expenses incurred by the officers in the performance of their duties and responsibilities as officers of the Commission.

Article IV
Commission Personnel

Section 1. Commission Staff and Offices. The Commission may by a majority of its Members, or through its executive committee appoint or retain an executive director, who shall serve at its pleasure and who shall act as secretary to the Commission, but shall not be a Member of the Commission. The executive director shall hire and supervise such other staff as may be authorized by the Commission. The executive director shall establish and manage the Commission's office or offices, which shall be located in one or more of the Compacting States as determined by the Commission.

Section 2. Duties of the Executive Director. As the Commission's principal administrator, the executive director shall also perform such other duties as may be delegated by the Commission or required by the Compact and these By-laws, including, but not limited to, the following:

a. Recommend general policies and program initiatives for the Commission's consideration;

b. Recommend for the Commission's consideration administrative personnel policies governing the recruitment, hiring, management, compensation and dismissal of Commission staff;

c. Implement and monitor administration of all policies programs, and initiatives adopted by Commission;

d. Prepare draft annual budgets for the Commission's consideration;

e. Monitor all Commission expenditures for compliance with approved budgets, and maintain accurate records of account;

f. Assist Commission Members as directed in securing required assessments from the Compacting States;

g. Execute contracts on behalf of the Commission as directed;

h. Receive service of process on behalf of the Commission;

i. Prepare and disseminate all required reports and notices directed by the Commission; and

j. Otherwise assist the Commission's officers in the performance of their duties under Article III herein.

Article V
Qualified Immunity, Defense, and Indemnification

Section 1. Immunity.
The Commission, its Members, officers, executive director, and employees shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising Out of or relating to any actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided, that any such person shall not be protected from suit or liability, or both, for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

Section 2. Defense
Subject to the provisions of the Compact and rules promulgated there under, the Commission shall defend the Commissioner of a Compacting State, the Commissioner's representatives or employees, or the Commission, and its representatives or employees in any civil action seeking to impose liability against such person arising out of or relating to any actual or alleged act, error or omission that occurred within the scope of Commission employment, duties, or responsibilities or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities; provided, that the actual or alleged act, error, or omission did not result from gross negligence or intentional wrongdoing on the part of such person.

Section 3. Indemnification.
The Commission shall indemnify and hold the Commissioner of a Compacting State, his or her representatives or employees, or the Commission, and its representatives or employees harmless in the amount of any settlement or judgment obtained against such person arising out of or relating to any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided, that the actual or alleged act, error, or omission did not result from gross negligence or intentional wrongdoing on the part of such person.

Article VI
Meetings of the Commission

Section 1. Meetings and Notice.
The Commission shall meet at least once each calendar year at a time and place to be determined by the Commission. Additional meetings may be scheduled at the discretion of the chairperson, and must be called upon the request of a majority of Commission Members, as provided by the Compact. All Commission Members shall be given written notice of Commission meetings at least thirty (30) days prior to their scheduled dates. Final agendas shall be provided to all Commission Members no later than ten (10) days prior to any meeting of the Commission. Thereafter, additional agenda items requiring Commission action may not be added to the final agenda, except by an affirmative vote of a majority of the Members. All Commission meetings shall be open to the public, except as set forth in

Commission Rules or as otherwise provided by the Compact. Prior public notice shall be provided in a manner consistent with the federal Government in Sunshine Act, 5 U.S.C. § *552b*, including, but not limited to, the following: publication of notice of the meeting at least ten (10) days prior to the meeting in a nationally distributed newspaper or an official newsletter regularly published by or on behalf of the Commission and distribution to interested parties who have requested in writing to receive such notices. A meeting may be closed to the public where the Commission determines by two-thirds 2/3rds) vote of its Members that there exists at least one of the conditions for closing a meeting, as provided by the Compact or Commission Rules.

Section 2. Quorum.
Commission Members representing a majority of the Compacting States shall constitute a quorum for the transaction of business, except as otherwise required in these By-laws. The participation of a Commission Member from a Compacting State in a meeting is sufficient to constitute the presence of that state for purposes of determining the existence of a quorum, provided the Member present is entitled to vote on behalf of the Compacting State represented. The presence of a quorum must be established before any vote of the Commission can be taken.

Section 3. Voting.
Each Compacting State represented at any meeting of the Commission by its Member is entitled to one vote. A Member shall vote himself or herself and shall not delegate his or her vote to another Member. Members may participate in meetings by telephone or other means of telecommunication or electronic communication. Except as otherwise required by the

Compact or these By-laws, any question submitted to a vote of the Commission shall be determined by a simple majority.

Section 4. Procedure.
Matters of parliamentary procedure not covered by these By-laws shall be governed by Robert's Rules of Order.

Article VII
Committees

Section 1. Executive Committee.
The Commission may establish an executive committee, which shall be empowered to act on behalf of the Commission during the interim between Commission meetings, except for rulemaking or amendment of the Compact. The Committee shall be composed of all officers of the Interstate Commission, the chairpersons of each committee, and the regional representatives and the ex-officio victims' representative to the Interstate Commission. The procedures, duties, budget, and tenure of such an executive committee shall be determined by the Commission. The power of such an executive committee to act on behalf of the Commission shall at all times be subject to any limitations imposed by the Commission, the Compact or these By-laws.

Section 2. Other Committees.
The Commission may establish such other committees as it deems necessary to carry out its objectives, which shall include, but not be limited to Finance Committee, Rules Committee, Compliance Committee, Information Technology Committee, and Training, Education and Public Relations Committee. The composition, procedures, duties, budget and tenure of such committees shall be determined by the Commission.

Article VIII
Finance

Section 1. Fiscal Year.
The Commission's fiscal year shall begin on July 1 and end on June 30.

Section 2. Budget.
The Commission shall operate on an annual budget cycle and shall, in any given year, adopt budgets for the following fiscal year or years only after notice and comment as provided by the Compact.

Section 3. Accounting and Audit.
The Commission, with the assistance of the executive director, shall keep accurate and timely accounts of its internal receipts and disbursements of the Commission funds, other than receivership assets. The treasurer, through the executive director shall cause the
Commission's financial accounts and reports including the Commission's system of internal controls and procedures to be audited annually by an independent certified or licensed public accountant, as required by the Compact, upon the determination of the Commission, but no less frequently than once each year. The report of such independent audit shall be made available to the public and shall be included in and become part of the annual report to the Governors, legislatures, and judiciary of the Compacting States. The Commission's internal accounts, any workpapers related to any internal audit, and any workpapers related the independent audit shall be confidential; provided, that such materials shall be made available: i) in compliance with the order of any court of competent jurisdiction; ii) pursuant to such reasonable rules as the Commission shall promulgate; and iii) to any Commissioner or of a Compacting State, or their duly authorized representatives.

Section 4. Public Participation in Meetings.
Upon prior written request to the Commission, any person who desires to present a statement on a matter that is on the agenda shall be afforded an opportunity to present an oral statement to the Commission at an open meeting. The chairperson may, depending on the circumstances, afford any person who desires to present a statement on a matter that is on the agenda an opportunity to be heard absent a prior written request to the Commission. The chairperson may limit the time and manner of any such statements at any open meeting.

Section 5. Debt Limitations.
The Commission shall monitor its own and its committees' affairs for compliance with all provisions of the Compact its rules and these By-laws governing the incursion of debt and the pledging of credit.

Section 6. Travel Reimbursements.
Subject to the availability of budgeted funds and unless otherwise provided by the Commission, Commission Members shall be reimbursed for any actual and necessary expenses incurred pursuant to their attendance at all duly convened meetings of the Commission or its committees as provided by the Compact.

Article IX
Withdrawal, Default, and Termination

Compacting States may withdraw from the Compact only as provided by the Compact. The Commission may terminate a Compacting State as provided by the Compact.

Article X
Adoption and Amendment of By-laws

Any By-law may be adopted, amended or repealed by a majority vote of the Members, provided that written notice and the full text of the proposed action is provided to all Commission Members at least thirty (30) days prior to the meeting at which the action is to be considered. Failing the required notice, a two-third (2/3rds) majority vote of the Members shall be required for such action.

Article XI
Dissolution of the Compact

The Compact shall dissolve effective upon the date of the withdrawal or the termination by default of a Compacting State which reduces Membership in the Compact to one Compacting State as provided by the Compact.

Upon dissolution of the Compact, the Compact becomes null and void and shall be of no further force and effect, and the business and affairs of the Commission shall be wound up. Each Compacting State in good standing at the time of the Compact's dissolution shall receive a pro rata distribution of surplus funds based upon a ratio, the numerator of which shall be the amount of its last paid annual assessment, and the denominator of which shall be the sum of the last paid annual assessments of all Compacting States in good standing at the time of the Compact's dissolution. A Compacting State is in good standing if it has paid its assessments timely.

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